CHILD MARRIAGES

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CHILD MARRIAGES

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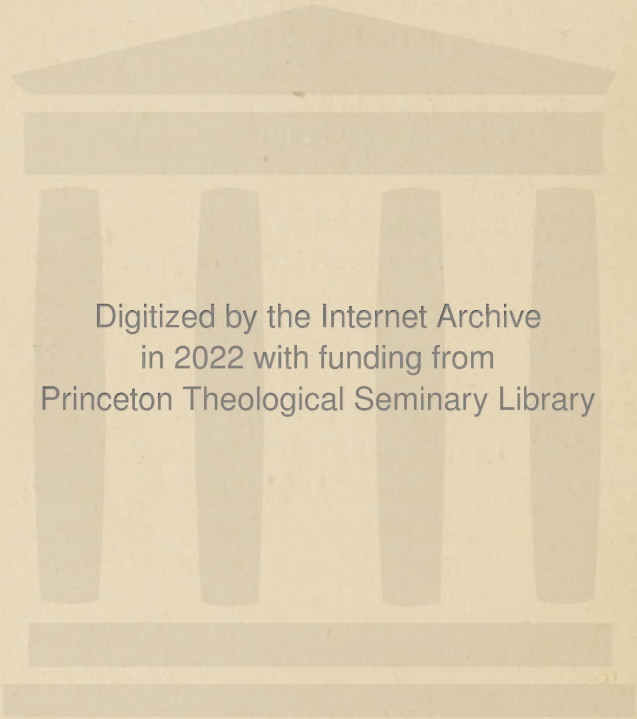
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CHAPTER I

INTRODUCTION

FACTS are stubborn things. When the atmosphere of a subject becomes charged with a mixture of personal prejudice and generous emotion, the facts that relate to it still keep their shape, refusing to adapt themselves to facile generalization. It happens that marriage is one of those subjects concerning which nearly everyone has views while few have facts. Often the alleged facts produced in popular discussions about marriage prove to be little more than statistics and sensational details about divorce. In spite of the close relation between divorce and marriage, many aspects of the latter have no relation whatever to the former. It would seem necessary, therefore, in any attempt to get the facts of marriage in their true perspective, to effect a temporary separation between these two topics. There are reasons for this separation which will appeal to the research student only, but a practical reason that should make a much wider appeal is the fact that there are elements in our

nation which cannot be united upon the subject of divorce, but which might work together heartily for the reform of our present marriage procedures.

Our own attention was first attracted to the subject of marriage administration in the course of case committee work in a family welfare society—the Charity Organization Society of New York. Many instances of marital maladjustment came to our notice there. While by no means all of these troubles were due to causes which we could identify, and while not a few that could be so identified seemed beyond any skill then available, it was clear that a considerable number could be traced to ill-devised and indifferently administered marriage laws.

Here, then, was a subject that had received scant attention and one that could be studied objectively. Accordingly, we began by preparing and printing a digest of American marriage laws.[1] These state laws showed wide diversity, some of it necessary in so vast a country with very dissimilar social conditions. But we have come to believe that a greater de-

[1] Hall and Brooke: American Marriage Laws in their Social Aspects—a Digest. New York, Russell Sage Foundation, 1919.

gree of uniformity and of social welfare could and should be achieved by reforms effected, first of all, locality by locality and state by state.

From the beginning, the good administration of laws already in existence has seemed to us even more important than the enactment of new measures, so that the publication of the Digest was followed almost immediately by a series of field studies for the purpose of seeing how the state transacted its part in the office of marriage. These studies extended over several years and included visits to 90 cities in 28 states. A body of first-hand material was gathered by this method.[1] This has since been supplemented by a study of the statistics of the subject, by research in libraries, and by an extended correspondence. The whole is now being analyzed and condensed into a book on the administrative side of the state's relation to marriage. When completed it will be but a beginning in a new field of study, and will need to be supplemented by many state-wide and local surveys. The field is all uncultivated as yet; no one has put a plow into it, though many social reforms already effected should

[1] In 83 of the cities and towns visited Alice M. Hill was responsible for the interviewing.

make its cultivation easier.[1] Our own inquiry should nevertheless provide some kind of fact basis on such subtopics as the marriage license system and its origin; the good practices discovered in marriage license offices that should be more widely adopted; the present exploitation of marriage as shown, for example, in marriage market towns or what used to be known as Gretna Greens;[2] the characteristics of hasty and clandestine marriages; the relation of civil and religious celebrants of marriage to the whole problem, and so on.

Our findings on youthful and child marriages, though closely related to these other parts of the study, were found to constitute a discussion nearly complete in itself. After some hesitation we have been persuaded,

[1] We are not unmindful of the studies already made of marriage legislation, more especially of the recommendations of the Commissioners on Uniform State Laws and of Howard's monumental History of Matrimonial Institutions, to both of which we are indebted. But so far as we have been able to discover no organized group has made any systematic attempt to improve the administration of marriage laws in the United States, and no detailed study of their administration has ever been undertaken.

[2] Gretna Green was a notorious village in Scotland just north of the English border to which runaway couples from England resorted. There are in the United States today a number of such marriage market towns where out-of-town marriages are licensed and solemnized with unusual expedition.

therefore, to print these few chapters in advance of their inclusion in the finished whole. This is done in order that members of leagues of women voters, of children's code commissions, family welfare societies, ministerial associations, and other bodies interested in the subject may make immediate use of our facts. It should be noted, however, that these facts concern the general public also, and parents, we believe, more than any other one section of the public.

Just because facts are stubborn and tend to lower the emotional temperature, they may also serve to clear the air. Our subject is full of pathos and one capable of arousing strong public indignation. If we seem, in these pages, to have treated it in a wholly unemotional way, we are far from being indifferent. We have faith, rather, in the appeal of the facts and are willing to let them make their own argument.

Anyone who has fought a practical reform through to a finish will have become familiar with the stock objection that the given measure is only a part of a larger question. As there are few undertakings either remedial or preventive of which this criticism cannot be made,

it is often irrelevant. Good public administration, of course, is neither the beginning nor the end of marriage reform. Good inheritance, good early training, wise educational measures, all play an important part in making marriage a more viable thing, and none of these can be neglected. But many people get a portion of their education from the state and its representatives. Our public servants exert no small degree of influence over the ideals and acts of a great body of citizens. When, therefore, we encounter the view that it is foolish to waste time upon laws and their administration in a department of human life in which instinct is in control, it may be well to examine this contention in some detail.

It is true that the institution of marriage is partly based upon an instinct as strong as are the instincts of self-preservation and of pugnacity. But that instinct and these other two have been controlled and reshaped not only by the material environment, but by a great body of social tradition which is transmitted, with many modifications and substitutions, from generation to generation. This molding world-force, which Carr-Saunders and Hobhouse before him have characterized by the one word

"tradition" and Graham Wallas by the term "social heritage," is at once the source of civilization and its chief means of development. Tradition is neither heredity nor environment in the restricted use of these words, though we inherit it in the sense that we are born into it, and this inheritance becomes more completely a part of us and of our environment than any merely physical conditions ever can. The way in which social heritage molds successive generations will be illustrated later in our discussion of the relation of parental consent to marriage. It is evident that, historically considered, parental authority over marriage has been exercised through all possible stages of tryanny and self-interest, though with no small admixture, as the parental relation developed, of affection and salted-down wisdom. If anyone still thinks that the biological instinct of sex has had its own uninterrupted way in the world, let him read Westermarck's History of Human Marriage in the rewritten edition, more especially the two chapters on "Frequency of Marriage and Marriage Age" and "Consent as a Condition of Marriage."[1]

[1] Westermarck, Edward: The History of Human Marriage, fifth edition, rewritten. London, Macmillan and Company, 1921.

The interesting fact about social tradition is not only that it is cumulative, but that it is capable of transformation at a rate of change now rapid, now slow, but never more rapid than in our own time. In this respect, tradition or social heritage closely resembles custom, which is its first cousin, and habit, which is its cousin once removed. "Social habits," says Westermarck, "have a strong tendency to become true customs, that is, rules of conduct in addition to their being habits."[1]

The social process by which custom is most successfully changed is known as substitution. A simple illustration of substitution is the following: Social workers stationed years ago in a city which had a well-developed factory system but no compulsory education law or child labor law in city or state, found that the German-American portion of the population had the long-established custom of taking their children out of school and setting them to work as soon as they had been confirmed. Formerly their work had been in the household, but

[1] For a development of this subject of social heritage from different angles, see The Population Problem, by Carr-Saunders, p. 437 ff.; Our Social Heritage, by Graham Wallas; and Social Change, by W. F. Ogburn. In this last volume will be found an interesting discussion of the process of substitution.

when factory doors swung open invitingly, the old connection between "confirmation" and "work" was carried over without the pressure of economic necessity in the family, for the German-Americans were a thrifty group of people. The children "made their first communion" at or below the early age of 12, and into the factory they went. The solution of this social difficulty was found with the aid of a compulsory education law which required the child to remain in school until a certain age or grade had been achieved. Here we have the substitution of further schooling for paid work—one custom for another.

Marriage law administrative reform will have to seek similar solutions today. Law alone in the child labor field and here also is of little effect without a series of careful adjustments and adaptations, social as well as administrative. The latter, in so far as they relate to youthful marriages, are indicated in the chapters that follow.

Wherever the unit of administration is relatively small and the population fairly homogeneous, we find the substitution of one group of customs for another accomplished with the minimum of friction and failure; but even in a

city the size of New York, with a population of such varying traditions and backgrounds, we have seen both compulsory education and the prohibition of child labor accepted within a generation through the operation of state laws and state inspection. It should be noted that this acceptance was aided by the close co-operation of groups especially interested in child welfare. The "replacement aspect of custom," to borrow a phrase from Professor Ogburn, had been demonstrated so many times in the last two decades of social endeavor that it became the starting point of field studies herein described.

At the time that our digest of marriage laws was published the recommendations of the Commissioners on Uniform State Laws with regard to laws regulating marriage had been allowed to get out of print. A further illustration of public apathy in this matter is the fact that, in 14 of our states, it is still possible for girls to marry at an earlier age than that at which they are permitted to become wage-earners. The subject of the marriageable age of girls has remained an inactive issue in these states, while their educational and child welfare agencies have kept the age of leaving

school and of entering industry a burning one. In the matter of child marriage no group, either in these states or elsewhere, has yet given serious attention to the social effect of existing laws and to their necessary daily adaptation in the license offices. How much longer will this state of things be permitted to continue?

CHAPTER II

THE MARRIAGEABLE AGE

MANY persons with whom, in the course of this study, the subject of the minimum marriageable age[1] was discussed were shocked to learn that the legal minimum is still 14 years for boys and 12 for girls in 14 of our states; that at and above these early ages any minor can now have the consent of the state to marry provided only that his or her parents have consented.[2] In effect, the states in question shift to parents the responsibility of decision for all ages above these minima and below 18 or 21, though, as will appear later, little pains is taken by state representatives to see that parental consent is given for all who are of the parental consent ages.

This whole subject not only of child mar-

[1] For the sense in which we have been obliged to use the term "minimum marriageable age" see footnote, page 54.

[2] These states are Kentucky, Louisiana, and Virginia, where the minimum ages referred to are fixed by statute; Florida, Maine, Pennsylvania, Rhode Island, and Tennessee, where they are fixed by judicial decisions under common law; and Colorado, Idaho, Maryland, Mississippi, New Jersey, and New York, where it has been presumed that the common law applies.

riage but of youthful marriage proves to be far more complicated and urgent than we had realized before our field studies were undertaken. As used in these pages the term "youthful marriage" applies to the marriage of a boy of 19 or under or a girl of 17 or under, while the term "child marriage" is adopted in order further to characterize those youthful marriages which are contracted at the age of 15 or earlier by girls and 17 or earlier by boys.[1]

Very youthful marriage is much more frequent among girls than among boys, so our discussions and statistics will be related for the most part in these chapters to the marriage of girls. In analyzing the 1920 census figures, we shall have to make the group of "married females 15 to 19 years of age inclusive," our usual standard of measurement, but for other purposes we shall follow the age classifications just named.

There have been times in the world's history when youthful marriage, more especially of girls, has been universal, and there are parts of the globe today where it would be exceptional

[1] We have used "youthful marriages" instead of "early marriages" in this connection because "early" is so often used in contradistinction to "late." "Early" marriages after maturity—in the early twenties, that is—are altogether desirable.

to find an unmarried female child over the age of puberty. A high-class Hindu, for example, would feel it a disgrace to be the father of such a child. "On a strict rendering of certain texts her unmarried state entails retrospective damnation on three generations of ancestors."[1] To trace the steps by which Western civilization has moved away from this tradition is beyond the scope of the present small volume. But we have found in our field visits wide gaps between the intent of the laws relating to youthful marriage and their actual administrative results, and have found some legislators, some administrators, and some clergymen who are still convinced that any girl arrived at the age of puberty is ready for marriage. We cannot take for granted, therefore, that child marriages are wholly a thing of the past. Before proceeding to a discussion of present-day conditions as we have found them, together with proposals for their betterment, it seems necessary to examine as briefly as possible the more theoretical side of this subject. What available evidence is there on the physical effects of child marriage? What influences have determined the marriageable age, and what bear-

[1] Westermarck, Vol. I, p. 379.

ing have the answers to these two questions upon the state's responsibility for child marriage? The institution of marriage is so much older than law that law must move cautiously with respect to it. The ideal minimum age indicated by science may be so far removed from the actual minimum still recognized by certain groups that progress toward the ideal will have to be made gradually.

The physiological evidence is not absolutely conclusive, though it all points one way; but the question has also its climatic and geographical aspects; race enters in; and there are involved, above all, those many phases of tradition, of custom, and of the prevailing culture that have already been referred to. These last three items may be grouped together under the single term "social." What may we conclude from an examination of these different points of view? What exceptions, adaptations, administrative safeguards would seem, in the light of our present limited knowledge, to be necessary in order to make the laws that regulate marriageable age more effective? It is recognized, of course, that the individual standards of American parents are often better than those that can be embodied in any stat-

ute, but even for these very parents a wise law wisely administered may prove a great aid in some unforeseeable emergency.

I. PHYSIOLOGICAL ASPECTS

Marriage and cohabitation even *before* the age of puberty are not uncommon in certain East Indian provinces and among many African tribes.[1] "Exactly what influence early intercourse has upon the generative organs and their functions," says Carr-Saunders, "is not clear. It is known, however, that early intercourse is injurious to the general health, and it is not difficult to understand in a general way how, if this is so, the reproductive functions would be adversely affected."[2]

As to the children of very young mothers, they appear to have less chance of living beyond infancy than do those whose mothers are older. According to a study made in Baltimore in 1915 by the United States Children's Bureau, the children of resident parents usually showed a higher mortality rate when their mothers were under 20 than when they were

[1] Westermarck, Vol. I, p. 380.

[2] Carr-Saunders, A. M.: The Population Problem, p. 103 ff. Oxford, Clarendon Press, 1922.

between 20 and 25. This was true in the case of both native and foreign-born white mothers, though not of Negroes, and true not only of first-born children but of those born subsequently.

In reply to a question from us as to the ages between which child-bearing is of greatest physiological advantage to mother and child, Dr. Walter B. Cannon, Professor of Physiology at Harvard University, states that, in the absence of adequate research, he knows of no conclusive scientific answer to our question, though many opinions have been expressed. He adds, however, that, in general terms, the biologist knows that marriage should not precede the completion of the period of rapid growth, since such growth makes heavy demands upon the organism. Beyond the age of puberty child-bearing is possible, but it is not, biologically speaking, advantageous until the bodily frame has had time to store up a reserve of vigor not attainable during rapid growth.

The practical problem, Dr. Cannon explains, is to discover between what ages girls in Amer-

[1] Rochester, Anna: Infant Mortality, pp. 137 and 341. Children's Bureau Publication No. 119, United States Department of Labor. Washington, 1923. The figures quoted apply to legitimate children only.

ica usually achieve this growth, and how long a period should elapse thereafter in order that they may have a chance to acquire their full vigor. He notes one indication of the drain of child-bearing upon a mother's vitality in the downward curve of her ability to nurse one child when she is carrying another still unborn.

The largest body of data on the physical development of young people in the United States comes to us in the anthropometric studies of Professor Bird T. Baldwin of the University of Iowa.[1] From a series of consecutively repeated measurements of the same groups of children and from other sources, Baldwin has made a beginning which should render entirely practicable before very many years the substitution of new methods of rating for the present chronological standards used for school admissions, for the granting of working papers, for the issuance of marriage licenses to minors, and so on. When data representative enough are at hand, our ratings can be based upon the physiological and mental age of the child or young person. For the

[1] Baldwin, Bird T.: The Physical Growth of Children from Birth to Maturity. University of Iowa Studies in Child Welfare, Vol. I, No. 1, 1921.

present, however, we shall have to continue to depend upon chronological age ratings, though it will be possible, with Baldwin's and other similar results in mind, to employ greater flexibility in their use.

As might be expected, Baldwin's data show marked individual variations even among normally developed children. Some of these variations are indicated in the summary of his findings which follows:

Age of Puberty. From data gathered in four different sections of the country, it appears that the age of puberty varies for individual girls from 10 years or earlier to the age of 16 or 17, and the variation for boys is from 11 to 16 years of age.[1] The median age of pubescence for girls was found to be 13 years and 7 months in an Iowa City school, 13 years and 8 months in a group studied in Baltimore County, Maryland, and 13 years and 9 months in schools in both New York and Chicago.[2] Country boys and girls and those from small towns are found to develop somewhat earlier than do those dwelling in cities.[3]

Variation as Between the Sexes. From the ages of 7 to 17 there is a clearly marked differ-

[1] Baldwin, p. 188. [2] Baldwin, p. 190. [3] Baldwin, p. 191

ence in rate of physical development in favor of girls. At the age of 7, girls reach a stage of development considerably in advance of boys, and girls continue to lead in succeeding phases of growth, so that a 12-year-old girl is as far advanced toward final growth as is a 14-year-old boy.[1] Baldwin cites his measurements of 10-year-old twins, a boy and a girl. Anatomically, Sarah, the girl, is about two years in advance of her brother Samuel, and should "for the next three years exceed Samuel in all measurements except those of the head."[2]

We see in the foregoing statements the basis in science for a difference of two years which has been established by the common law of England and by the practice of most of our states between the minimum marriageable age for girls and that for boys.

While the case on the physiological side is far from complete, the weight of evidence, in so far as we have been able to discover it, is all against marriage for either sex at puberty, against the marriage of girls under 16, and, on the whole, though not so conclusively, against marriage for girls under 18 or for boys under 20. It has not seemed necessary to multiply

[1] Baldwin, p. 164. [2] Baldwin, p. 187.

authorities and references at this point, though the data bearing upon wide individual variations seem to us important. Evidence of these wide variations emphasizes anew the need of exercising all the intelligent discretion possible within the law; and the necessity, moreover, of so drafting our marriage laws that discretion is not only allowed but expected. In forming a conclusion, as the license issuer must, about a particular case, averages have their value but they also have their dangers. No one should "use the method of probabilities if he has an opportunity of getting behind it and understanding the causes at work in the special case."[1]

II. CLIMATIC AND GEOGRAPHICAL ASPECTS

A country that includes within its boundaries the 25th and 47th parallels must consider, in addition to the division of this subject which is directly physiological, the influence of climate upon youthful marriage. Nor, with our large and varied foreign population, can we ignore racial influences. Physiology and race belong to what may be termed the organic

[1] Sidgwick, Alfred: The Application of Logic, p. 69. London, Macmillan and Company, 1910.

aspect of our subject; climate and geography to the inorganic; while all those varying traditions, folkways, institutions religious and secular, that shape the life of the individual and influence marriage customs may be classified as belonging in the superorganic or social division.[1]

Generally speaking, the hotter the climate the earlier girls mature and the shorter the whole period of their maturity. It is necessary, however, to distinguish between natural and artificial climate. Our own heated houses and warm clothing, the overheated hut of Lapp or Eskimo, account for what appear to be exceptions to this rule. Then too, "altitude rivals latitude in influence. A low place in the north has a mean temperature similar to high places farther south. For example, the Indians in the plains of Peru mature at 9 and the mountain Indians at 14."[2]

Some authorities claim that the United States are an exception to this rule, but the data on which they base this claim seem very inconclusive. In fact, as regards youthful

[1] The use of these three terms to characterize the three divisions is Professor W. F. Ogburn's.

[2] Steinach and Kammerer: "Klima und Mannbarkeit," in *Archiv für Entwicklungsmechanik der Organismen*, Vol. XLVI, pp. 391–458. Berlin, 1920.

marriages, a somewhat rough analysis of the 1920 census returns, by distributing the several states into four zones on the basis of normal annual temperature, gives the results shown in Table 1.

TABLE 1.—PERCENTAGE OF GIRLS MARRIED IN FOUR CLIMATIC ZONES OF THE UNITED STATES

Girls 15 to 19 years, native white of native parents only

Zones	Normal annual temperature	Per cent married
Coldest	35° to 45°	7.5
Less cold	45° to 55°	10.9
Warmer	55° to 60°	17.6
Warmest	60° to 75°	17.8

The foregoing table eliminates the influence of race. Of other factors that may have entered into this result, probably one of the most important is the difference in frequency of youthful marriages in large cities and in small towns and rural districts. In the latter, marriage at an early age is more frequent. But it is possible to eliminate this influence, in a measure at least, from our calculations. Thus, a comparison of the same data for all cities of 100,000 population and over (grouped by geographical instead of by isothermal divisions)

showed a contrast in the proportion of youthful marriages similar to that of Table 1. That is, youthful marriages are more frequent in the large cities of the southern portion of the country than in those of the northern portion.

Indication of this tendency to marry earlier in a warm climate than in a cold one appears also in the latest marriage statistics issued by the Italian government that are unaffected by Italy's participation in the European war. In 1914, the proportion of youthful to total marriages in each compartment of the kingdom, arranged from north to south, was as shown in Table 2.

Climate may be considered strictly as related to the temperature and humidity of the air, together with the winds and rainfall—to the weather, that is—or it may apply also to altitude, waterways, and nature of soil, thus becoming closely related to the physical geography of a region. In this latter sense the Southern Highlands of the United States furnish a good illustration of the relation between climate, geography, and youthful marriage. Their altitude, if this were the only factor to be considered, would tend to delay marriage. But wherever we find natural barriers to intercom-

TABLE 2.—BRIDES UNDER 20 YEARS IN PROPORTION TO TOTAL BRIDES IN ITALY IN 1914, BY COMPARTMENTS[a]

Compartments[b]	Brides per 1,000 brides of all ages	
	Under 15 years	15–20 years inclusive
Piedmont	..	296.7
Lombardy	..	250.2
Venetia	..	225.0
Liguria	..	253.7
Emilia	..	256.4
Tuscany	..	249.0
Marches	..	268.3
Umbria	..	238.6
Lazio	..	229.3
Abruzzo and Molise	0.3	325.7
Sardinia	..	231.1
Campania	0.3	266.1
Apulia	0.4	325.0
Basilicata	0.3	462.1
Calabria	1.2	447.0
Sicily	1.2	413.8

[a] Direzione Generale della Statistica e del Lavoro, Movimento della Popolazione, nell' anno 1914, p. xxiv. Roma, 1917.

[b] Provinces or compartments having about the same latitude are grouped together.

munication, and towns and villages isolated by those barriers, there we are likely to find youthful marriages. These are due in large part to the difficulty of communication with

an outside world which has more varied pleasures and occupations, together with greater educational resources. The Appalachian chain, as it extends through the Virginias, Kentucky, Tennessee, and North Carolina, has kept intact the tradition of an earlier day. There are few Negroes in the region, and John C. Campbell in describing the mountain whites makes these statements:

> As a rule marriage comes early in the mountains. A girl is a spinster at 18, and on the "cull list" by 20. The writer has had pupils leave school at 12 and 13 to marry, although this is becoming less common every year. . .
>
> There is little comfort for the spinster, relegated to the hard tasks of life, yet dependent for support upon her male and her married woman kindred, all of whom are agreed in thinking her a failure. "Then you be n't married," said the weary mountain mother of many children to a teacher from a distant church school, "and you don't look like you minded it nuther."[1]

The following is from a letter written from Kentucky in April, 1922:

> A young fellow of 18 who works in the mine is to marry K————, who is 14. Miss B. has promised every girl who waits to be married until she is 18 a wedding at the Pine Mountain School and a wedding present.

[1] Campbell, John C.: The Southern Highlander and His Homeland, pp. 133 and 127. New York, Russell Sage Foundation, 1921.

III. RACIAL ASPECTS

"In spite of our prepossessions to the contrary," says Ellsworth Huntington, "it is becoming evident that much of what we call racial character is really the effect of physical environment acting upon generation after generation."[1] Without accepting in its entirety the wide sweep of Huntington's generalizations with regard to the relation between climate and race, or between climate and the economic, political, and social welfare of man, our studies do seem to reveal that the new environment of America has had a marked influence not only upon the general character of the immigrant population but upon the ages at which they and their children marry.

Table 3, following, presents figures from the census of 1920 which show that the extent of this influence is confined to no group of states but, with variations, is country wide.

In our discussion of this table, it will be simpler to refer to the first group as "native girls" (native white of native parents); to the second as "foreign girls of the second genera-

[1] Huntington, Ellsworth: World Power and Evolution, p. 227. New Haven, Yale University Press, 1919.

TABLE 3.—YOUTHFUL MARRIAGES BY SECTIONS OF THE COUNTRY AND BY STOCK

Percentage of girls, 15 to 19, married, according to the 1920 census

Section	All	Native white of native parents	Native white of foreign parents	Foreign-born white	Negroes
New England	6.2	6.8	4.1	11.0	11.9
Middle Atlantic	8.0	8.4	5.9	11.7	16.9
East North Central	10.1	11.0	6.4	15.0	23.9
West North Central	9.7	11.1	5.5	13.7	19.4
Pacific	12.0	12.3	9.0	19.2	17.5
Mountain	13.8	13.6	10.7	24.4	22.2
South Atlantic	16.9	16.3	9.2	17.5	18.7
East South Central	19.6	19.2	7.8	19.0	21.0
West South Central	19.0	18.5	13.4	23.6	21.9
New York City	5.3	5.5	4.0	7.2	15.3
Whole country	12.5	13.3	6.3	14.3	20.0

tion" (native white of foreign parents); and to the third as "foreign-born girls" (foreign-born white). The table shows that foreign-born girls marry somewhat younger than native girls. For the country as a whole the difference is small—14.3 per cent of the former being married and 13.3 per cent of the latter[1]—

[1] A similar contrast is shown for girls 13 and 14 years of age, the ratios per 10,000 being 41.5 for foreign-born girls and but 28.3 for native girls. Figures for these ages by different geographical divisions are not available, and our table is confined, therefore, to the age group 15 to 19 years.

but in several sections outside of the southern states a much wider variation is shown. This variation is not surprising, for early marriages are common in several countries from which our foreign-born girls come, and many of them have been in this country too short a time to respond to new influences. Some, in fact, may even have been married before they came here; with others their national traditions tend to prevail. But the foreign habit of early marriage does not persist after the first generation. Only 6.3 per cent of the foreign girls of the second generation were married as compared with 14.3 per cent of the foreign-born girls.

The outstanding reason for this contrast between the two generations is, we believe, the absence of effective wage demand for the labor of girls of the ages considered on the continent of Europe and in Mexico, and the existence of that demand in this country.

Another contrast which Table 3 presents is more difficult to explain. The figures indicate that the custom of youthful marriage among foreign-born girls has been so changed among foreign girls of the second generation that they are actually marrying at a later age than native girls. The difference is striking—

13.3 per cent of the native girls between 15 and 20 are married, but only 6.3 per cent of the foreign girls of the second generation.[1] The contrast cannot be explained by the fact that native girls live more generally in rural districts, where youthful marriages are common, for a similar contrast was found in all but 10 of the 66 largest cities in the country. In some cities it was small, as in New York, figures for which are shown in the table; but in others it was large, as in Grand Rapids where the percentages are 9.6 of the native girls and 4.2 of the foreign girls of the second generation. Thus, even in cities, foreign girls of the second generation marry later, as a rule, than do native girls. This fact is traceable to the same cause that has already been suggested for the later marriages of second generation foreign girls as compared with foreign-born girls. In both cases the contrast would seem to be due to their differing response to the wage demand.

In 1920, 45.2 per cent of these second generation foreign girls were gainfully employed, as compared with but 25.0 per cent of the native

[1] For girls 13 and 14 years of age a similar difference is shown, the ratios per 10,000 being 28.3 for native girls and but 14.8 for foreign girls of the second generation.

girls.[1] We have consulted a number of persons who know our foreign population of the second generation. They agree that the existing wage demand influences girls of that generation and the native girl very unequally because of their different social situations. The highly prized social recognition which comes to the native girl by many avenues seems to most foreigners and their children unattainable save through one door alone and that the door of profitable employment. It is true that, with foreign stock, economic necessity is also a factor of great importance, but with them the drive of necessity and that of opportunity both lead in the same direction—away from very youthful marriages. Thus, the daughter who in the Old Country would have been married at the first chance, must now, for a few years at least, delay marriage—often will wish to do so—in order to help in putting her own and her family's fortunes on a firmer foundation.

As regards the larger proportion of youthful marriages among Negroes shown in our table, it is necessary to record the fact that for five states—North and South Carolina, Alabama,

[1] Census of the United States for 1920. Abstract of Occupation Statistics, p. 562. Washington, 1923.

Kentucky, and Oklahoma—the difference generally found throughout the country did not hold. In these states proportionately more white girls than Negro girls were shown by the census figures to be married. The same tendency apparently was disclosed by figures collected by our field worker in three Alabama counties and by figures reported by the Alabama State Board of Health.[1] No attempt is made here to explain these contrasting results, but it is not believed that most census statistics relating to the marital status of Negroes can be used with assurance as to their accuracy. Family life among Negroes is still less stable than among other racial groups. This instability is fully explained by the history of the race, and in all probability no census returns relating to this phase of their lives picture the true situation.

IV. SOCIAL ASPECTS

When we turn to the superorganic aspects of youthful marriage we find ourselves in that field of endeavor in which the good administration of existing laws achieves beneficent results, and their bad administration greatly

[1] Annual Report of the State Board of Health of Alabama for 1918, p. 66.

delays social progress. But the traditions and customs that form so large a part of our social life are shaped not only by social experience deliberately applied with a view to the modification of these customs. They have been and will continue to be shaped by religious beliefs, by occupational standards and industrial conditions, by housing conditions, by the pioneer life of a newly settled country, by the exigencies of war, by the peaceful processes of education and of organized play, and last but not least by the conquest of that separateness in which many rural families have dwelt. This conquest has come about through multiplying means of intercommunication—through the railroad, the postal service, the telephone and telegraph, the newspaper, the automobile, and so on; and all of the shaping and reshaping process has a closer relation to marriage customs than is generally recognized.

Reference has been made to the Southern Highlands, where geographical isolation seems to have been the chief factor in perpetuating the youthful marriages of an earlier time. It should be noted that state boards of education and other agencies of public welfare are beginning to overcome the backwardness of this

region. But we find other forms of isolation and other barriers quite as effectual, in their own way, as are a range of mountains. Thus, the descendants of many of the earlier German settlers of Pennsylvania (popularly known as the Pennsylvania Dutch) have been able in the past, though separated from their neighbors by no geographical barrier, to resist successfully the influence of such characteristically American institutions as the public school, the ballot, and the newspaper. It was the isolation of a fixed idea and tradition that kept them—still keeps them to a certain extent—a peculiar people. Owing, perhaps, to the religious persecutions and devastating wars that sent them to this country, many of them, more especially those of peasant stock, clung tenaciously to their own language, their own customs, and their own seventeenth century ideas of the relations of the sexes.

The fact has already been referred to more than once that people tend to marry earlier in country districts than in cities. This phenomenon is largely a social one. In cities, the development of manufacture and, as has been noted, the introduction of women into wage-earning industries, the greater diversity of in-

terests, better opportunities for schooling and for recreation, combined with the pressure of an advancing standard of living, all tend to delay marriage. By contrast, agriculture favors youthful marriage. Among occupational conditions that have delayed marriage in the past may be mentioned the old apprenticeship system and the older forms of domestic service which are now rapidly disappearing. A period of industrial depression immediately lowers the marriage rate, but industrial recovery brings a corresponding increase. In other days, before the growth of large industrial communities, the number of marriages in Europe was said to vary inversely with the price of corn.

During the European war there were many marriages of girls in their teens, though the housing shortage in our American cities tended at the same time and later to delay marriages somewhat. Thus, war and post-war conditions had a disturbing influence upon marriage statistics not wholly overcome at the time the census of 1920 was taken. The general effect of the war, by hastening marriages that would have taken place in any event and by causing marriages that might never otherwise have

occurred, was to increase to somewhat more than their normal proportions the number of married girls in the 15 to 19 and 20 to 24 age groups of the census.

It should be noted, however, that the proportion of those married in these 15–19 and 20–24 age groups[1] has increased steadily since 1890, and that at least a part of the increase is due to the fact that more of our people of all ages are marrying now than then. This is contrary to the popular impression that marriages are longer delayed than formerly and that more people remain single. It is true that not every section of the country shows an increase; in some sections there has been a considerable decrease. No one explanation can be given of the fact that, for the country as a whole, the proportion of married to single persons has increased. If, however, we may judge by the statistics of marriage in good times and bad, we should be inclined to name, as one very important factor in the increase, the marked advance in material prosperity in the United States since 1890, and the far wider distribution of prosperity at the end of the period than at its beginning.

[1] The comparison includes at this point the widowed and divorced as well as the married.

In certain isolated American communities we still find not only very early marriages, but so many intermarriages among the cousins of one family strain that sometimes three-fourths of the inhabitants of a village have the same surname. Increased facilities of communication, however, by railroad, automobile, telephone, telegraph, and newspaper have come to mean not only a more varied food supply, greater cultural advantages, and a through draft of ideas; they also bring about a wider choice and, in all probability, a somewhat delayed and better choice of mates.

V. WHAT THE MINIMUM MARRIAGEABLE AGE SHOULD BE

It has been pointed out that in 14 states the minimum marriageable age is only 12 for girls.[1] In nine states it is 14,[2] in eight states it is 15,[3] in 17 states it is 16,[4] and in one state, New

[1] See page 20.

[2] Alabama, Arkansas, District of Columbia, Georgia, Iowa, North Carolina, South Carolina, Texas, Utah.

[3] Missouri, Minnesota, North Dakota, Oklahoma, Oregon, South Dakota, Washington, Wisconsin.

[4] Arizona, California, Connecticut, Delaware, Illinois, Indiana, Kansas, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, Ohio, Vermont, West Virginia, Wyoming.

Hampshire, it is 18. In discussing these variations with different persons we sometimes encounter the view that child marriage avoids illegitimacy and immorality, and even that it supplies a remedy. In other words, we are asked to accept the tradition that a child is mature enough to marry because it might become or has become the victim of parental neglect or of brutal abuse. "There is much immorality among the foreign population of our city," reported a social worker. "If they could marry younger [than 15] it might be eliminated." This would seem to be a naïve view of the ease with which elimination can be effected and wholesome living achieved. By affixing the rubber stamp of the state we cannot make sound a condition known to be unsound.

A judge of one of our domestic relations courts, taking a more realistic view of what constitutes morality, said to our field representative, "There always will be immorality, but the marriageable age will have little or no effect upon it." Some of the clergymen interviewed, though only a few, seemed to have accepted the theory that the marriageable age was simply a question of the age of puberty.

"Marriage at an early age," said one, "takes care of itself." And another announced the comfortable conclusion that "the good men who are our legislators and are fathers of girls have looked into this matter and have decided that the present minimum age [14 years for girls in his state] is best." The view of a larger number, however, was that of the Protestant clergyman who said, "Below 18 a girl is too immature to marry. She does not know her own mind." And two Roman Catholic priests expressed themselves vigorously to us on the subject: "I preach against marriages under 18 and talk against them," said one of them. "The girl who marries under that age is overburdened and, in a few years, worn out. One girl, known to me to have married at 15, has had two children before the age of 19, and has been in the hospital for numerous operations. She was married in another parish." "Girls are not physically or psychologically ready for marriage before 18," said the second priest, "but if the marriageable age is made 18, the reasons for the change should be carefully explained to the people of the state."

Administrative officers have additional reasons for objecting to these unions. "Children

should not be married at 14," said an attendance officer. "Husband and wife live together a few months, possibly there is a child, and then they separate." "If girls did not marry until 18," one license issuer commented, "there would probably be fewer marriages of young girls to old men." While another one observes, "Very youthful marriages cheapen the relationship and detract from the solemnity of the association, even when the marriage is with the consent of the parents."

But one of the most important aspects of youthful marriage—one now assuming new significance under the growing influence of women outside the home as well as their increased power within it—has not yet been touched upon. We refer to the way in which the marriage of girls in their early and middle teens perpetuates in fact, whether in theory or not, the undemocratic relation of the sexes. In such a union the husband is usually older, often much older, than his girl bride, and he is in charge of her—he becomes the guardian and mentor of his wife. The transfer of an immature girl from guardianship in the home of her birth to continued guardianship in the home where, had she entered it later, she

might have been one of two equal partners, inevitably cripples her personality and that of her mate as well. Neither may ever know the meaning of genuine comradeship in the marriage relation.

We were at pains to inquire of people of experience in a number of the cities visited during this study what, in their opinion, the minimum age should be below which no girl should be granted a marriage license either with or without parental consent. The 113 replies received are here summarized. These opinions came, not in response to a questionnaire, but in the course of what was usually an extended discussion of the many sides of marriage law administration. All of the 113 people whose opinions are included in our summary were responsible either for some part of the administration of the marriage law in widely separated communities in 20 different states, or else they were well placed to observe its results. The minimum ages suggested were as follows:

12-year minimum	1 person
14-year minimum	5 persons
15-year minimum	6 "
16-year minimum	47 "
18-year minimum	45 "
Over 18 years	9 "
Total	113 "

The sources of these opinions by geographical divisions and by occupations were:

Geographical Divisions		Occupations	
New England	8	License issuers	42
Middle Atlantic	18	Social workers	36
South Atlantic	6	Judges	14
East North Central	23	Clergymen	9
East South Central	18	Unclassified	12
West North Central	7		
West South Central	8	Total	113
Mountain	1		
Pacific	24		
Total	113		

The number of persons who favored lower ages than 16 or higher than 18 is comparatively small. About a third of those who favored either 16 or 18 stated that exceptions should be allowed. Of the 113 persons interviewed 101, or over 89 per cent, favored ages ranging from a minimum of 16 with exceptions up to 21 without exceptions. In general, about the same ages were preferred by license issuers and by social workers, while judges, possibly because of their experience with divorce and annulment cases, favored somewhat higher ages. Of the 92 license issuers, judges, and social workers questioned, 76 favor a higher minimum than the laws of their various states now require. These are the three occupational

groups brought most closely in contact with young people seeking permission to marry and with those seeking the annulment of marriage. Only four license issuers, three social workers, and two judges favored a minimum age below 16 years. As already stated, 16 is the minimum now established by law in 17 states,[1] though, as we are to illustrate later, this particular measure is administered with a laxness in the proof of age required, or an absence of proof, which in most of the 17 states reduces this minimum considerably. Our investigators found that the license issuers in marriage market towns usually favored a low marriageable minimum, but a third of the license issuers expressing an opinion on this point favored an absolute minimum of 18 or higher.

If we may add to this summary our own conclusions as to what the minimum marriageable age for girls should be, we are inclined, after careful weighing of the evidence, to take a rather conservative view for the immediate future, believing that any sudden and considerable advance of the age minimum in the various states without preparatory education of the community and detailed provisions for

[1] See page 45, footnote.

intelligent license issuance, as well as for review of the evidence in exceptional cases, will do little good and perhaps considerable harm. With a minimum higher than 16 and possibly with that minimum, there should be some provision for the exceptional case. It is true that the exception clauses in marriage statutes have sometimes worked very badly in practice, but in the few places in which these clauses of the law are well administered they are genuinely serviceable. Men and women who care for human progress and welfare must realize that there is no short-cut solution of the problems of marriage. They should cease putting their faith in a multiplicity of new laws or in any short-cut centralization of the law-making power, and should devote a larger share of their enthusiasm, energy, and ingenuity to making the reasonably good law work. If the present minimum age is absurdly low, as in some states it is, then advance it gradually and at the same time see that the law is enforceable and enforced. A minimum of 14 is better than one of 12; a minimum of 16 is much better than either; but it may be impracticable to jump from 12 to 16. The evidence, we feel, points to 18 as the minimum toward which our

cultural standards are likely to be advanced in time, but few states are ready for this as yet.

As regards the legal minimum ages in effect at present in the different states there is no basis on which an entirely satisfactory classification can be made. Only 10 states clearly fix this minimum by prescribing a minimum age for license issuance. Some states fix the ages below which marriages may be annulled for "lack of age," some the ages below which persons are forbidden to marry or "are incapable of contracting marriage," some specify the ages at which persons "may marry" or at which they "are capable of marrying." Usually it has been held by the courts that marriages may be annulled if contracted below the statutory ages fixed by any of these different phrases, or, in states with no statutes on the subject, if contracted below the common law ages of 14 for boys and 12 for girls.

Outside of the 10 states in which the law definitely fixes a minimum age for license issuance, the designated officials are obliged to assume that they have no right to issue licenses to applicants below the ages established as justifying annulment of marriage for underage. This is a fair assumption. We have

adopted it here for the reason that we find this position quite generally taken by the license issuers interviewed or communicated with. In New Jersey and New York, however, the view was found to be general among license officials that the annulment statutes have no relation to license issuance. We have been obliged, therefore, to regard administration in these states as controlled solely by the common law marriageable ages of 14 and 12.[1] This confused situation is one indication of the extent to which our marriage laws have been neglected.

The subject is further confused by the common use of the phrase "age of consent" to describe the minimum age for legal marriage. Unfortunately the same phrase is used to describe the age below which a female child is presumed to be unable to consent to sexual intercourse, and it is also used to indicate the age at and above which parental consent for marriage is unnecessary. The term, therefore, is one which should be avoided in discussing legal marriage requirements.

[1] It will be noted from the foregoing that, throughout this chapter and elsewhere in this study of administration, we have been obliged to use the term "minimum marriageable age" as signifying the minimum age at which marriage licenses are issued after parental consent has been granted.

CHAPTER III

MARRIED CHILDREN

THIS century has often been misnamed "the century of the child." In sober truth, with a quarter of the full term behind us, it must be acknowledged that the twentieth century is no such thing; certainly not when conditions in a country as intelligent as the United States still make possible the marriage of children—girls of 15, 14, and even younger, and of boys 17, 16, 15, and younger. Such conditions constitute only a small part of the body of evidence against exaggerated claims of advance in the matter of child welfare, but they are a part which has not yet been described in any detail.

I. THE SIZE OF THE PROBLEM

Marriage license records can give little idea of the number of brides under 16 for the reason that ages are so frequently falsified at the license office by bride, bridegroom, and parents. Their affidavits are accepted in lieu of proof, and usually there is no attempt at verifica-

tion on the part of the issuer. Even in states having no minimum marriage age requirement, save the common law rule of 14 for boys and 12 for girls, we find that parents misrepresent the ages of their daughters in an effort to conform to the general social standard, or to what they have heard that the law requires. When, however, the census enumerator arrives to record the members of a family, their ages, and their status as married or single, there is less reason for misrepresentation, and we may assume that the count is more likely to be accurate, though even the census figures understate the size of the problem. Census returns do not give age at marriage, but the 1920 census shows that 12,834 girls recorded as married were 15 years old at the time the census was taken, and that 5,554 more were under 15, giving a total in that year of 18,388 who were still under 16 and had married at 15 or at some earlier age. The census also takes note of 825 female children of 15 or under who were either widowed or divorced. We have gathered in some detail and shall describe later the records of 240 child marriages,[1] of which a little over 23 per cent were solemnized (if that is the

[1] Entered into by 250 children, some of whom married each other.

right word) when one of the candidates was under the age of 14, and in a few cases as young as 11.

As compared with many other census totals those just quoted seem small. But it must be remembered that each of the child wives of 1920 has a lifetime before her, and that every year during which she lives other child brides will enter married life at the age of 15 or less. Looking backward, we note that the same process has been going on for many years and, with the help of the four censuses taken between 1890 and 1920 and the aid of actuarial life tables, we estimate that approximately 343,000 women and girls who are *living in the United States today* began their married lives as child brides within the last 36 years.[1] This estimate does not include a good many still living who married prior to 1890.

But each marriage involves in vital ways the social welfare of two people instead of one—

[1] The number of married children under 15 years of age is reported for all census years since 1890, when marital statistics were first collected by the census. The number who were 15 years of age is reported separately for 1910 and 1920 and has been estimated for 1890 and 1900. From these figures an estimate was made of the average number of girls 15 and under marrying during each year since 1889–90. The number of these still living in 1924—successively larger numbers each year—was then calculated from life tables.

involves their welfare with certainty and may involve that of their progeny. Our estimate, therefore, should include in round numbers 324,000 husbands, the number estimated as living at the end of the period considered.[1] This gives a grand total of 667,000 persons now living in this country whose lives have been directly influenced as principals by the practice of child marriage. It should be noted that the children born to these husbands and wives, though their welfare also is undoubtedly involved, are not included in this estimate. Nor have we included boys married at 17 or younger to girls or women older than 15, because the number of such marriages is relatively small.

II. SOME CHARACTERISTIC FEATURES OF THE PROBLEM

With respect to the marriage of girls under 16 and boys under 18, it seems to us that the

[1] In the latter calculation it is assumed that the average age of the husbands of the girls who married under 16 was 23 years at the time of the marriage. Statistics published for New York State (exclusive of New York City) as of the years 1916, 1917, and 1918 by the state department of health show that the average age of men who married girls under 15 was 23.3 years, and of those who married girls of 15 was 22.6 years.

outstanding fact is the physical and mental immaturity of these children. This fact was emphasized in the preceding chapter. It is unchallenged and in one sense needs no supplementing. Such evidence for and against child marriage as may appear from the particular instances that we have been able to assemble will serve not as further proof, but as a means of illustrating certain characteristic relations between child marriage and parental control, and between both and the issuance of marriage licenses. Parental control is so important that this aspect of the subject will be discussed in a separate chapter.

It is in the very nature of the marriage relation that only a fragmentary account of it is possible. The objective things, especially the least happy of them, become matters of common knowledge and sometimes get into the full and careful records now kept by certain children's agencies and family welfare societies. We might have attempted to assemble a set of summaries in regard to the unhappy aspects of child marriage drawn from these sources, but they would not have presented a representative cross-section of the child marriages of the country for the reason that these

agencies deal with a highly selected group. Without hoping, therefore, to develop a sampling method of any great precision, we have contented ourselves with making as many inquiries as possible about the characteristics of this particular marriage group from the persons interviewed on other marriage matters in the course of our general field visits, have followed up by correspondence a number of slight clues, and have supplemented information gained in these ways by adding to it data about 27 cases reported by Arthur W. Towne, former superintendent of the Brooklyn Society for the Prevention of Cruelty to Children.[1] Our sources of information include not only child welfare and family welfare societies, but license issuers, judges, chiefs of police, sheriffs, probation officers, clerks of court, school officials, and, in a few instances, lawyers and clergymen. Sometimes a first clue of a child marriage has been an item of news in a daily paper, but no cases have been included from this source or from marriage annulment petitions without further verification.

[1] Towne, Arthur W.: "Young Girl Marriages in Criminal and Juvenile Courts" in *Journal of Social Hygiene* for July, 1922. Also a paper on "Juvenile Marriages," p. 208 ff. in Proceedings of New York State Conference of Charities and Correction, Buffalo, 1920.

In all, we have a few pertinent facts about each one of 250 married children reported to us. These 250 were married in 31 different states. Twenty of the 250 married one another, so the total number of marriages, as already indicated, was 240. In addition to these 250 children we have information about 15 others whose marriages were prevented. While we know the ages of all of the 250, we do not know in every instance the ages of those they married—there is definite information about the ages of these latter in less than half of the cases. We know that the children's parents consented to the marriage in 109 instances, and that they withheld their consent or that the marriage took place without their consent in 79 instances, but about 52 of the marriages there is no information as to whether the necessary parental consent was lacking. With these gaps duly noted and our readers warned that material gathered about so small a number is suggestive rather than conclusive, let us see what our group of cases contains.

In the first place, Americans still have the romantic idea that there is something peculiarly idyllic about the marriage of a boy and

girl who have fallen in love with each other. Dickens noted this characteristic of ours many years ago during the public readings of his second American tour. A prime favorite with his audiences was that story, told by the Boots at the Holly Tree Inn, of two little children who ran away to Gretna Green to get married. But unfortunately the most characteristic child marriages are not of this sort. The nearest approach in any of our 240 cases to romance is the following:

The pair were schoolmates, the boy 15 and the girl 17, when they eloped. They told a license clerk in a nearby town across the state border that both were 21. The license was issued and they were married by a recorder. Two witnesses to the ceremony are required by law in that particular state. The state's records show that one of the two witnesses in this case was probably the wife or daughter of the civil celebrant officiating at their marriage. For lack of funds, the two had to return to home and school and keep their marriage secret. When the boy's father discovered it he was able to obtain a decree of annulment. We may assume that this escapade ended less unhappily than is usually the case with child

marriages, though for a period the two families involved must have had an unhappy time.

In all probability the license issuer, celebrant, and witnesses of the marriage in the foregoing case were more than careless. In the following they were shockingly so: A boy of 16 and a widow of 49 left their own state and were married in another one in which the law requires that an interval must elapse between the issuance of a license and the marriage ceremony. The boy's parents knew nothing of the proposed marriage. False ages and residences were sworn to by bridegroom and bride, the date on the license registry was falsified to conform with the law requiring an interval before the marriage, a "witness" swore falsely as to the boy's age and an agent procured the services of a clergyman to marry them. The bride, it is alleged, spent more than a hundred dollars to effect these various special arrangements. When the boy's parents undertook to annul the marriage and secure the punishment of the official and others concerned, the wife fought legal proceedings and spirited the boy away to a third state, where she succeeded in marrying him once again. This second case was something more than an escapade; it

must mean unhappiness either now or in the future for everyone concerned.

Our 240 marriages include 20 of boys who married before they were 18 years old. In seven of the 20 the boy was younger than his bride, and in four of these seven he was much younger. Out of 79 marriages of girls under 16 years old in which we know the age of the bridegroom, less than half show a difference in age that is below 10 years, 20 others show much greater disparity in age, and some bridegrooms were four and even five times the ages of their brides.[1] Only 17 of the marriages could be described as boy and girl marriages; the average age of the 79 bridegrooms whose ages were known was 26.7 years. Arthur Towne tells of a wife of 15 jumping rope on the sidewalk, and urged by her husband's people, with whom she lived, to do her jumping in the backyard only, as such conduct was unbecoming in a wife. On the whole, the romance of child marriages vanishes upon nearer view. This will be even more evident when we analyze

[1] In Massachusetts (see Vital Statistics of Massachusetts for 1919, p. 46) only 11.8 per cent of the brides under the age of 20 in 1919 married husbands in the same age group. In the more normal situation shown in the next higher age group of 20 to 24, nearly 48 per cent of the brides married inside their own age group.

the outcome of such marriages later in some detail.[1]

Another characteristic of our 240 marriages is the haste with which they were arranged and consummated. Some of them border upon abduction without its occasional feature of brute force.

An example of this is the case of a schoolgirl of 14—one carefully protected in her home, and with a good character record in the church school that she attended. A stranger ten years her senior met her and some of her school companions at a county gathering, and induced her to go with him to a nearby town to get married. He showed knowledge of the laws against abduction and how to avoid them, for he sent the child alone to a hotel where she was to stay the night and where she registered. He did not molest her that night. The next day he instructed her to claim at the license office that she was 18, and paid a cab driver $5.00 to act as witness at the wedding. He then took her to his own room, sending her the following day to her parents to say that she had known and loved him for a year and a half.

[1] See page 69 ff.

Still under his influence, the child actually told this tale, but a little later broke down, acknowledged the truth, and said that she had been intimidated and really disliked the man. In jail, the husband admitted that he had a venereal infection. The parents dropped their attempt to prosecute this fellow on his threat to contest the annulment of the marriage.

The following are notes illustrative of similar cases that have been reported to us in less detail:

A 12-year-old colored girl in an Alabama city had an older sister to whom a certain man had been paying attentions. Suddenly, he ran off with the younger girl and married her. Her mother applied for an annulment.

A 13-year-old white girl in another city of the same state ran away with a man of 34 who promised her a new dress. A probation officer reports that this promise was the chief inducement.

A girl of 15 in New York State went to the marriage license office with friends who were seeking a license. While there, she was dared to marry another friend of the bride and groom, a youth of 19. Taking the challenge, she was granted a license on the spot and married the same day. This marriage was annulled later.

Instances like these, and they are not uncommon, illustrate the value of a law which,

before a marriage license can be issued, requires advance notice to the issuer of licenses that the candidates intend to marry. The usual requirement of such a law calls for an advance notice of five days.[1] Such a measure, in combination with the proof of age requirements that we shall propose in Chapter V, would if honestly enforced make marriages similar to those just described almost impossible. Every one of them took place without the knowledge of parents, and the children involved were either within the ages for which parental consent to marry was required by law or else were too young for legal marriage even with such consent.

It must be acknowledged, however, that, among the various motives which seem to lie behind child marriages, a not infrequent one is the desire to escape from unhappiness in the home. Failure on the part of parents to understand their children or to win their participation in home plans and purposes, and failure even more fundamental when the home is

[1] Eight states now require an interval between the application for a marriage license and its issuance. These states, arranged in the chronological order of their adoption of the law are Maine, Wisconsin, New Hampshire, Massachusetts, New Jersey, Delaware, Nebraska, and Georgia.

without standards and the children are neglected, are large factors in these marriages. They are factors that must not be ignored in any broad program of marriage reform; but they belong to a consideration of the home itself and of the relations established there between parents and children rather than to our present analysis. In a few instances we have well-substantiated accounts of mothers being jealous of the youth and attractiveness of their daughters, and one of a mother's marrying her child of 15 to her own paramour, but these are the exceptional situations, and our aim is to set forth the more usual circumstances found in this child marriage group.

A motive often encountered is the use of marriage as a means of escape from law enforcement—to avoid punishment for disorderly conduct, for example, to evade the requirements of the compulsory education law, and so on. As these evasions will be considered in another connection,[1] the only one that we shall attempt to illustrate here is that of detention in an institution for mental defectives.

A 15-year-old girl escaped temporarily from

[1] See pages 83, 96 and 100.

a home for the feeble-minded in Kentucky in the following manner: The mother and the prospective bridegroom visited the institution and got permission to take her out to have her picture taken. Instead of returning with her as promised, they went back to their home town, where the child was married. Notice of the girl's disappearance was sent to the family welfare society which had been responsible for her commitment. The society procured a warrant and returned the girl to the Home. In some states the fact of marriage would have released her, and this is what the mother assumed would happen.

The extent to which feeble-mindedness enters into our problem is not adequately indicated, in all probability, by the information at hand about these cases. The behavior of a number of the children suggests subnormality, but in most cases no diagnosis had been made, and in only eight was feeble-mindedness known to exist. It must not be assumed, however, that most child marriages bear a relation to the problem of mental defect.

An ugly and difficult aspect of these 240 marriages is their relation to commercial ex-

ploitation and immorality. One child married at 12 was known later to be running a disorderly house. A child of 14 was married to the man who had criminally assaulted her, and the charge against him was then withdrawn. A child of 14 was taken by her husband to live in a notorious resort. A child married at 15 charges that her husband has forced her to become a prostitute. A child of 11 made a similar charge against the man that her stepmother forced her to marry. Another child of 11 had been married by her parents to a married man. A child of 15, found in a disorderly house, was returned to her family, and her husband sent to jail. Another child of 15, and one of 12, married men who later were imprisoned for criminal assault.

We should re-emphasize the fact that the reports, case records, interviews, and letters from which these items of information about child marriages are gathered were almost all of them from sources more likely to be familiar with unhappy endings than with happy ones. Nevertheless, we were not prepared for the very temporary character of this group of marriages. In 11 cases the husbands and

wives separated in a few days, in seven cases in a few weeks, in eight cases in a few months, in 16 cases they never lived together or else never established a home of any kind. Out of 90 cases in which present status was known, only 16 married pairs were still living together at the time our information was received. In 28 of the 90 cases, annulments or divorces had been granted, or proceedings were still pending. All of which gives a depressing picture of carelessly drawn marriage laws and of even more careless marriage law administration followed by great instability in the marriage relation.

Closely connected with the foregoing facts are the ages at which these 250 children were married. Of the total, 61, or 24.4 per cent, were under 14, and 12 of these 61 were 12 years old, while five were as young as 11; 62, or 24.8 per cent, were 14 years old; 119, or 47.6 per cent, were 15; and eight (boys), or 3.2 per cent, were 16 or 17.

Full credit, on the other hand, should be given for the discrimination shown and pains taken in the 15 other cases already mentioned as known to us in which a marriage was prevented after the license had been applied for.

In one case the marriage was prevented by detectives, in two cases by a church worker, in another case by the parents of the girl, and in 11 cases by the vigilance of license issuers.

The license situation in these child marriage cases taken as a whole, however, is far from satisfactory. Out of the 240 marriages recorded, the number of illegal issuances of licenses found was as follows:

TABLE 4.—MARRIAGE LICENSES ILLEGALLY ISSUED IN THE 240 CASES STUDIED

Bride or bridegroom or both below the minimum age		79
Parental consent given	30	
Parental consent not given	29	
No information as to parental consent	20	
Bride or bridegroom or both of age requiring parental consent, but parental consent not given		50
Total licenses illegally issued		129

That more than half of the 240 licenses were illegally issued suggests grave faults of administration; that nearly half were legally issued suggests the need of further legislation.

The Chicago Municipal Court, in a report for 1917, said:

> The number of these childish victims of illegal marriages is increasing at such a rate that drastic action should be taken by the courts to have the law prohibiting the issuance of marriage licenses to minors enforced.

Not long ago a 13-year-old bride was brought into the Court of Domestic Relations. She had been married several months and was pregnant. She wanted to have her husband arrested for non-support. Although the least observant person could see that she was an undeveloped child, physically slight and childlike in appearance, she had been able to secure a marriage license, though unaccompanied to the marriage license bureau by her mother or a guardian, and she was able to get a minister to marry her to a man twice her age. The man was sent to the House of Correction for a long term and a heavy fine imposed.[1]

There have been improvements in license administration in Chicago since this was published, but as regards the country at large similar evils persist. Our 250 children, as already reported, come from 31 different states, and in no state of the Union, probably, are happenings such as have been described wholly exceptional. In every one of these states the simple provisions for assuring proof of age suggested in Chapter V are needed.

It is often assumed that the practice of child marriage is limited in the United States to foreign-born children, or at least to the children of the foreign born. But this is very far

[1] Tenth and Eleventh Annual Report, the Municipal Court of Chicago, 1915–1917, p. 113.

from being true of the country as a whole, though it may approximate the truth for a few sections of it. As we have seen, there were 18,388 married girls who were still under 16 when the 1920 census was taken. Of this number 11,959 were native white girls of native parentage, and only 2,452 were either foreign-born white or else native-born white of foreign or mixed parentage.[1] Even more striking are the facts as to the girls included in the foregoing figures who were under 15. There were 5,554 girls so enumerated, of whom the native white girls of native parentage constituted 62.1 per cent and the first and second generation foreign white girls only 17.9 per cent.

III. EXCEPTIONS IN PREGNANCY CASES

The Child Welfare Commission of Missouri, which succeeded in establishing a minimum marriageable age of 15 in that state in 1919, reports through its secretary that an exception, permitting the issuance of licenses below this age, and intended to cover pregnancy cases chiefly, had to be added after their bill was

[1] Included in the 18,388 married girls given in the census as under 16 were 3,833 Negroes.

introduced. This was done to overcome the opposition of legislators who, in all probability, would have defeated the measure without some such addition. Provision for exceptional cases is unnecessary, of course, in the 14 states still having the common law minimum age for girls of 12. In 10 of our states, however, exceptions are provided for in some form in the law,[1] and we note a tendency among license issuers in other states visited to grant licenses below the legal age when pregnancy is claimed, even though they are exceeding their legal authority in so doing. Only five states make definite reference to pregnancy in the exceptions provisions of their marriage law, but in practice this condition is the chief reason for granting exceptions. In all states making exceptions in the law save Connecticut and Delaware the exercise of discretionary power rests with some designated court, and our field visits covered an examination of court practice in pregnancy cases in five such states.

[1] The states having these exceptions in the law are Arizona, Connecticut, Delaware, Kansas, Massachusetts, Michigan, Missouri, New Hampshire, Ohio, and Oklahoma. Indiana is not included; section 8366 of the code of 1914 (Burns' Statutes) seems to provide for general appeals to a court when licenses are refused, rather than for exceptions to the established marriageable ages.

In Illinois, where the minimum age is 16 years for girls, by an interpretation of the bastardy law the Attorney General ruled in 1913, "though not without some doubt," that it was the duty of the county clerk to issue a license for marriage in rape or bastardy cases upon an application for marriage license which was otherwise regular, and that, upon the marriage following, "any prosecution for rape or bastardy will abate." This ruling has been challenged informally by at least one judge, but license officials were following it in most of the Illinois offices visited. Judge Arnold of the Juvenile Court of Chicago held that girls under 16 who are wards of the court must wait until they are 16 before their marriage can take place.

In Michigan there is a special provision that a judge of probate shall issue a license without publicity to any girl or woman who makes a statement under oath that she is with child which, if born before her marriage, will be illegitimate; or who has lived with a man and has been considered as his wife, and so on. This act also provides for the secret filing of application and license record. A judge in one city of the state was found to have granted five

such applications of girls under 16 in the year of our visit, and to have rejected two. In another Michigan city, the judge makes a practice of asking a social worker to investigate such cases. This worker reports that in some instances the marriages have been in the interest of public morals, but that usually they are entered into simply to avoid criminal prosecution of the man in the case and have proved neither happy nor permanent. The prosecuting attorney in this same city had never known of a marriage performed under the act that had had a successful outcome.

In an Ohio town, an examination of juvenile court records for three and a half years revealed 15 cases in which the court had granted permission to marry below the marriageable age on account of pregnancy. A former probation officer of this court stated that the judges often refuse applications. In his opinion the appeals that had been granted, though legitimatizing unborn children, had often meant unfortunate marriages. In one instance a divorce had been applied for only a few months after the marriage.

In Massachusetts our field workers found more individualized attention to these "ex-

ceptions" cases than they were able to discover elsewhere. There were marked differences in the procedure of different judges, of course, but in Suffolk County (which includes Boston) all applications for permission to marry made to the probate court must be filed with the court twenty-four hours in advance of the hearing. This gives anyone interested an opportunity to be heard. It is true that during the war the issuance of such court orders increased in Suffolk County from 15 in 1917 to 38 in 1918, and 42 in 1919. Later figures, however, show a decrease. One Boston judge grants the orders only after careful inquiry into the surrounding circumstances. This procedure constitutes, in fact, the nearest approach to careful, case by case, marriage law administration that we have found anywhere in the course of our field studies. Applications from all girls who are not Italians are sent to one of the probation officers, and no decision is made without this officer's written report. In the case of Italians, the judge requires a letter from the girl's priest. He finds that priests do not favor marriages under 16 and that fewer orders are being granted to Italians in consequence of this procedure. The head

of a children's agency in Boston reports that among the reasons for refusal of court orders are feeble-mindedness on the part of one or the other of the two candidates for marriage, mixed blood, a criminal record or tendency, and in general such other conditions as would indicate that the marriage would be socially unwise owing to absence of the elements upon which a stable marriage can be built. "Many orders are granted which we, as social workers, would refuse, but on the whole our probate judges have given careful consideration and have exercised wise judgment."

In Delaware exceptional cases are passed upon, in effect, by the candidates themselves, it being provided merely that the legal age restrictions shall be waived if the two candidates for the license swear that "they are the parents or the prospective parents of a child."

In one of the marriage market towns or Gretna Greens visited, a license issuer was found who stated without hesitation that licenses are issued from his office to girls under the required minimum age of 16 whenever they are pregnant. There is no legal exception in that particular state. This official stated that he enters the age on his record as 16, ex-

plaining that there is a state statute which permits one to make an untruthful statement under oath "if it is for the protection of a lady's reputation." He could not refer us to this statute. In a license office in another state an issuer was found who waives the parental consent clause of the marriage law whenever there is evidence that a girl is to become a mother. Similar illegal practices were found in six other license offices.

A significant feature of the situation, from both a statutory and an administrative point of view, is the fact that always in the law, and usually in practice as we found it, there is no requirement that a condition of pregnancy be proved through examination by a qualified physician. The mere assertion that pregnancy exists is ordinarily accepted. Thus a note attached to a form used for special license application under the Michigan law reads as follows:

> *Note*—Under the amended act, as contained in the laws of Michigan 1899, p. 364, no provision is made for the verification of the sworn statement of the bride by examination of the "family physician of one or both parties," as provided in the original act.

The fact that the more rigid requirement of the original act was repealed is significant. It has been claimed that most child marriages are "forced marriages"; that they are rendered necessary, in the eyes of parents at least, by the fact of pregnancy. This claim is not borne out by our studies. Pregnancy has been found to be only one of the causes for the marriage of girls under the age of 16. Even in Michigan, where, as stated, marriage licenses may be issued to candidates under that age for practically no other cause, only 55 such licenses were issued in the whole state during the year analyzed. In Ohio, the Cincinnati court reported that it had not more than one or two such cases a year.

There is still a wide gap between the legislative view of the right way to treat the girl under 16 who has had sexual relations and the views of child welfare specialists. The latter feel that only under exceptional circumstances does marriage *at the time* promise her or her child the best chance of a healthy, useful life. Whether she is pregnant or not, they feel that there is no one way of solving her difficulties. There are many ways that have proved themselves by repeated tests to be well adapted to

different situations and different types of girls. The general public, on the other hand, usually has one sovereign remedy for everybody in these cases, and this the very one which has worked well least often. Moreover, the public does not even take pains to assure itself, through its officials, that the condition to be covered by special legal exception actually exists.

IV. THE CONFLICT WITH CHILD WELFARE LAWS

The most conspicuous conflict of child marriage laws with other measures that relate to children is a conflict with the compulsory education law in certain states where girls are required to attend school until they are 16 or over unless gainfully employed. In 23 states having this educational requirement the minimum marriageable age was lower than 16 at the time of our special inquiry on this point. To discover what happens in these states, and the degree of conflict between their educational and their marriageable age requirements, we addressed a letter of inquiry to, or held interviews with, 41 city superintendents of schools, with the following results:

18 reported no cases of conflict brought to their attention
16 reported that married girls were not compelled to attend school
7 reported that married girls were compelled to attend school

Information received from other sources in a few of the 18 cities in which we were told that the question had never been raised leads to the inference that, in these particular cities at least, the question of conflict in the laws does not come up because the compulsory education law is always set aside when a schoolgirl marries. The State Superintendent of Public Instruction in California in 1920 was of the opinion that the compulsory education law was enforced, but our field visits brought out statements to the contrary from school people in three California cities, and agreement with the Superintendent in only one. From seven cities reporting enforcement come instances of child marriages being prevented by educational authorities. The following are examples:

The mother of a girl of 15 thought that if her daughter married the girl would no longer have to go to school and could go to work. She was told that her daughter must attend school whether married or not.

The candidates had already taken out a marriage license, but when they learned that school attendance would be compelled, they did not marry, and the girl remained in school.

We prevented the marriage in this case [writes a chief attendance officer in regard to a girl whose marriage license had already been issued] by obtaining a writ from the juvenile court, and having the child detained in the Detention Home. The girl was later placed on probation to the juvenile court and ordered to attend regularly. Later, we had two cases in the juvenile court in which the girls had gone through an illegal marriage ceremony, and in each case the girl was placed on probation to the juvenile court and ordered to return to school, and the man in each case was directed to annul the marriage. Our laws are stringent enough, and I hope some day we can get the prosecuting attorney to prosecute the man in cases of this type.

This conflict of marriage laws with the education law was considered by the National League of Compulsory Education Officials in 1920, and a resolution was adopted urging uniform laws in all states which would forbid the marriage of boys and girls of compulsory school age. Wherever compulsory education has become an accepted custom this would seem to be a reasonable solution.

That so many states are thinking more pro-

gressively when they think educationally than when they think matrimonially, may be due to the crude romanticism attaching to boy and girl marriages, of which mention has already been made. Only a few years ago the editor of a daily paper, in discussing a higher minimum age for marriage, found it necessary to apologize for seeming to wish to "kick romance out of the affairs of the twentieth century."

Not only in departments of education but in the functions of a number of other public departments—the issuance of working papers to minors, the control exercised over young delinquents and defectives, and so on—a minimum marriageable age which is below 16 runs athwart the purpose of child welfare laws. In so far as such laws are beneficent in their effect, a lower minimum for marriage often nullifies that effect. Despite several court rulings to the contrary (in Philadelphia, Detroit, and Minneapolis, for example) it would seem to be necessary actually to remove the conflict in the statutory law. Thus, a Denver lawyer calls our attention to the fact that under English common law a minor who marries is freed from parental control, and cites a Colorado

decision to this same effect. As it is usually the parent who is prosecuted for failure to send a child to school, the enforcement of a compulsory education law becomes, he contends, to that extent impossible.

CHAPTER IV

PARENTAL CONSENT

THUS far youthful and child marriage has been discussed in these pages with no more than an occasional reference to the authority of parents. It now becomes necessary to examine in some detail that aspect of the marriage of minors in the United States which relates to what is technically known as "parental consent."

I. PARENTAL CONTROL OF MARRIAGE IN THE PAST

In many lands and many periods of the world's history the parent or other relative, or else the head man of village, clan, or tribe, has had absolute power over all matrimonial alliances. At certain periods this has been truer in theory than in fact; the bride has had more of a voice than has appeared on the surface, and natural parental affection has developed side by side with very different controlling motives. At many other times, however, some of them not far distant, the young people

have been helpless. Marriage has conformed to a tradition "quite independent of all individual wishes," and the power of the parent has been exercised in the interest of such institutions as the family, the tribe, the caste, and the political unit. Even today this institutional attitude toward marriage is not wholly a thing of the past.

Westermarck is at pains to point out that, in countries without a literature, the elders were the sole authorities on religion; that the young people were kept in awe partly by mysterious rites known only to the old men, partly by the fact that the goodwill of parents would be needed after their death as a protection from evil spirits. Standing halfway between the clan and the immediate family, and exercising great influence over the marriage of all members of the latter, were the relatives. Thus, among the Natchez Indians, the heads of both families, "usually great grandfathers," had the final decision. In some tribes and clans the maternal or paternal aunt of the bridegroom had this power. A Melanesian never married "against the will of his father's sister."[1]

The practice of betrothing children in early

[1] Westermarck quotes Rivers here, Vol. II, p. 280.

childhood, in infancy, and even before birth is credited to widely scattered parts of the globe.

At different times in the world's history parental control of mating has extended from before birth, at one extreme, to far beyond maturity at the other. The authority of the Roman father was supreme throughout the life of his child, though with certain restrictions in later times. The Greeks and Teutons could expose their children in infancy, could sell them in case of urgency, and could give their daughters in marriage without consulting their wishes.

Throughout all the diverse marriage customs recorded by students of the subject, parental control seems seldom to have been exercised with a view solely to supplementing the child's relative helplessness. On the contrary, the proprietary character of the parental relation is emphasized at every turn by such institutions as marriage by purchase, marriage to procure the services of a valuable domestic for the bridegroom's father, marriage in order of seniority, and so on. Elopement was the sole alternative which gave a certain degree of release from a tyranny that only increased with the accumulation of property. An early

New Jersey marriage law (1668) required the consent of "parents, masters, or overseers;"[1] and an irate New England father of the opposite political persuasion from that of the father of his daughter's suitor could, in 1660, have the latter fined £5 by the colony for making love to her without parental permission.[2]

One of the earliest recognitions in this country of the responsibility of the state appears in the codification of laws made by the Massachusetts Bay Colony in 1641. It is there provided that, "If any parents shall wilfully and unreasonably deny any child timely or convenient marriage, or shall exercise any unnatural severity towards them, such children shall have free liberty to complain to authority for redress."[3]

Note throughout the foregoing brief paragraphs the recessive character of parental control over marriage. The right to marry, whether with or without parental consent, is denied in theory at least in 17 of our states to

[1] Howard, George Elliott: A History of Matrimonial Institutions, Vol. II, p. 309. Chicago, University of Chicago Press, 1904.

[2] Howard, Vol. II, p. 163.

[3] Massachusetts Historical Society Collections, Third Series, Vol. VIII, p. 230. Boston, 1843.

girls below the age of 16, and in 22 states to boys below the age of 18. As will be shown, lack of administrative efficiency often lowers these minima in actual practice, but even so, the situation today in this country reduces parental authority to very narrow limits in the more progressive states—to two years only of required consent for the marriage of girls (16 to 18), and three years for boys (18 to 21).

Some students of the history of marriage, notably Elsie Clews Parsons, prophesy and advocate the total elimination of parental consent. It should be added, however, that usually these reformers also advocate making "maturity the only age criterion for mating," and would have the legal age of majority made the minimum marriageable age.[1] But we have seen that chronological age is at best a rough and ready measure of maturity, though there is no better test at hand. Between the girl who is unusually mature at 16 and the one who is singularly immature at 18 no law now discriminates on the ground of this difference in development. All is left to parents or to chance. The parent, though not perhaps an

[1] Parsons, Elsie Clews: Social Freedom, p. 33. New York, G. P. Putnam's Sons, 1915.

expert judge, is at least a competent witness. While, therefore, everyone is working to bring about better administration of our marriage laws, it would be the part of wisdom to provide for some court, or better still for some department, of review specially equipped to deal competently with problems of children and young people, and to which son or daughter on the one hand or parents on the other might appeal when they cannot agree on a question of parental consent to a marriage. It may sound logical to say that if a girl is mature enough for marriage she is mature enough to make her own decision unaided,[1] but actual situations are not nearly so clear cut as all this. In the absence at the present time of any satisfactory substitute for parental consent, we should be sorry to see parents wholly deprived of the limited power they now have. As will appear presently, however, what some parents need far more than power is insight and foresight. Where these are wholly lacking, the state must be able to throw some safeguard around the young.[2] Only where the parents

[1] See Race Improvement, by LaRaine Helen Baker, p. 50. New York, Dodd, Mead and Company, 1912.

[2] See the discussion of substitutes for parental consent on page 109ff.

of a girl between her sixteenth and eighteenth or of a boy between his eighteenth and twenty-first birthday cannot agree with the matrimonial intentions of daughter or son would there be need for any appeal to outside authority, but the right of appeal should be open. Signs are not lacking, meanwhile, that with the spread of social education and of education for marriage, parents will become able in the future to abandon any merely legal authority for that inherent authority which is the fruit of understanding and caring.

II. PARENTAL CONSENT AND CHILD MARRIAGES

As stated in the preceding chapter, a large number of the child marriages reviewed took place with parental consent. There were known to have been 109 of these out of the total of 240 studied. In 30 of the 109 marriages the children were so young that they were below the age at which a marriage license could have been issued legally even with the consent of the parents.

What do these figures mean in terms of family and social welfare? First as to ages, we know that four of the children were married with parental consent at the age of 11, that

five had such consent at the age of 12, and that 18 had it at the age of 13. In one of these 13-year-old cases the license issuer was so impressed with the child's immaturity that he appealed to the corporation counsel of the city to prevent the marriage; but the issuer was advised that, as the state law allowed any girl of 12 or over to marry with the consent of her parents, there was no way of preventing it. In a case in another state, where the minimum marriageable age for girls is not 12 but 16, parents married off a daughter of 14, swearing that she was 16. Many violations of the marriage law are traceable to this practice of accepting affidavits in lieu of proof where proof could easily be produced.

Our information is more complete about the immediate circumstances surrounding these 109 marriages approved by parents than about their later history, but we have definite information as to what happened in 36 instances. To give as concrete a picture as possible of the happenings for which parents have assumed responsibility in this connection these 36 cases, several of which have already been referred to, are summarized briefly as follows:

No. 1. A probation officer reports a boy under 18, who produced at the license office of a southern town a forged letter of consent by his parents to his marriage to a child of 14. The parents of the girl had given their approval, but the boy's parents proceeded to have the marriage annulled and their son committed to a reform school.

No. 2. A California judge reports the marriage of a child of 12 to a man of 39. A license was refused, but the girl's parents accompanied her across the border into Mexico, where they were successful in obtaining the necessary sanction to effect the marriage. The judge reporting this case had issued a separation order, had made the child a ward of the court, and had directed that annulment proceedings be brought. Before this last was done, however, the husband in the case was sent to prison for criminally assaulting another child.

No. 3. In another California case reported by a license issuer the girl seemed to him so young that issuance was refused, but she and the prospective bridegroom appeared later with a sworn statement from her mother that she was 17. Eight months later the mother applied for an annulment of the marriage on the plea that, at the time it took place, her child was only 11 years old. Prosecution of the man for perjury failed on the ground that the girl was pregnant.

No. 8. A clerk of court reports the sale, in a north central state, of a 14-year-old child by her father to a man who wanted to marry her. She was brought into court later for attempting to poison her husband. The

"sale" was alleged by the child and denied by her parents, but the clerk believed the story of the parents to be less worthy of credence than that of their daughter.

No. 9. An account of this feeble-minded child, whose marriage was arranged by her mother, is given on page 69.

No. 14. The story of a little Chinese girl of 11, which was reported by a church worker, is confirmed also by court records and by reports from several other social agencies. The marriage annulled by the court had been arranged by the child's stepmother. The clergyman who officiated claimed later that the little girl had been made to appear older at the wedding. She ran away in two or three months, stating that the Chinaman to whom she had been married had detained her until then against her will.

Nos. 16 and 17. Two cases are reported by a New York State protective agency of four children unable to obtain working papers because they could not or would not make their school grades. As two were boys and two were girls, their parents overcame this difficulty by arranging two marriages—one of a girl of 15 to a boy of 17; the other of a girl of 15 to a boy of 19. Working papers were issued, but the 19-year-old boy ran away soon after his marriage.

No. 20. Another New York State case, reported by a clerk of court, is that of a girl of 15 under the care of the juvenile court but married by her mother without court consent to a boy of 18. As soon as the court heard of the marriage it had the girl committed to an industrial school.

No. 21. In a southern state having a marriageable age minimum of 14 for girls, the county solicitor reports a child of 12 who was married with her mother's consent. Later the husband was convicted under a state law which makes marriage with a girl under 14 a misdemeanor. He served a sentence of one year.

No. 22. A family welfare society in the Middle West reports verification of the marriage of a child of 13 to a man of 23 with the consent of her parents, who swore that she was 16 years old. The juvenile court issued warrants for the arrest of the girl's parents and husband on charges of perjury and of contributing to the child's delinquency. The father was fined $200 and the husband the same amount. The marriage has been annulled.

No. 23. A district attorney in Texas reports the marriage of a child of 11 with the consent of her mother. The child's future husband swore that she was 16. As he was found to have another wife living, he was sent to prison for five years on charges of bigamy, rape, and false swearing in order to obtain a marriage license.

No. 26. A clerk of court in Wyoming reports the case of a 13-year-old girl whose mother swore that she was "about 16," and gave her consent to a marriage that was later annulled.

No. 251.[1] Teacher and probation officer in a southern city both report a child of 15 married to a man of 22 who

[1] Numbers higher than 250 mean that consecutive numbers were given to a large group of cases of youthful marriage, some of them over and some under the child marriage age limits.

had tuberculosis. The child wept when forced by her mother to marry him. He took his bride to another city and, in a few days, the child left him.

No. 256. A child of 13 in California applied for a divorce. The judge reporting her case says that she had been married with her mother's consent to a man more than twice her age.

No. 271a. A mother eager to marry off her 12-year-old daughter swore that she was 18 at the time of her marriage to a soldier. The marriage took place in Connecticut. The husband deserted his wife in two months, and later it was found that he was married already when this second marriage took place. (These facts were verified from the annulment proceedings and from the report of a social agency in the distant state in which the child's mother lived.)

No. 272. A family welfare society in Connecticut reports a girl of 15 married with parental consent on the claim that the girl was pregnant. This proved to be untrue. The married pair separated in a few weeks.

Nos. 311 and 312. A family welfare society in the South reports two sisters, aged 15 and 12, married with their mother's consent to two soldiers to avoid court action for disorderly conduct. The dates of their birth, as sworn to on the licenses, were only two weeks apart. The younger one after her marriage was known to have been running a disreputable house.

No. 313. A family welfare society in the South reports the marriage of a child of 14 to a man with a venereal infection. Her mother swore that she was 16.

The pair separated in seven months and the wife sued for divorce later.

No. 335. A clerk of court in a southwestern state reports that a child of 14, married with the consent of her guardian, is said by the superintendent of the state hospital to be a moron. Since her marriage, she has been brought into court on the charge of murdering her stepchild.

No. 346. A family welfare society in New York State reports the annulment of a marriage in which the girl was 15 and was married with her father's consent.

Nos. 347a, 347b, 347c. The secretary of a child protective agency in New York State reports that three children, of 15, 14, and 13 respectively, married with the consent of their parents. The first charged that her husband was compelling her to be a prostitute, the second left her husband in three months and was placed in an institution, the third left her husband in three days.

No. 359. Another child protective agency in New York State reports the case of a feeble-minded girl of 15 with an illegitimate child married by her father to a total stranger, aged 36, who was seeking a housekeeper. The husband soon appealed to a court to commit his wife to an institution for the feeble-minded, and this was done.

No. 362. A family welfare society in New York City reports the marriage of a girl of 15 with parental consent. Her husband died two years later, but during those two years the marriage was a successful one.

No. 367. A child protective agency in New York State reports a child of 14 married by her father to a boy of 18 because he could not keep her off the streets at night. A few weeks later she was found in a notorious resort. Upon her urgent request the agency placed her at work where her husband could not find her. At last accounts she was doing well.

Nos. 371 and 371a. Another children's agency in New York State reports the cases of two wayward girls of 15 who, just sentenced to a term in the state reformatory for girls and not yet placed there, were married hastily by their mothers to two worthless fellows of the town. These girls were taken to the institution after the marriage, but their husbands were able to procure a court order for their release.

No. 377. This same agency reports the case of a pregnant child of 14 married by her mother to a disreputable man who deserted her in two weeks.

No. 377b. A New York State agency reports a 15-year-old girl who eloped with a man without marrying him. The police arrested the pair and persuaded the girl's mother to consent to her daughter's marriage. The man's family, with whom the two went to live, did not treat the bride well and she eloped again in two months. The marriage arranged by the police has since been annulled, and the girl has married again.

No. 377c. The same agency reports an Italian father who is alleged to have sold his child of 14 to a prospective husband for $40. The child soon refused to live with her husband and the agency procured a court

order two years later which permitted her to live apart from both husband and father.

No. 377d. Still another case reported by this agency is that of an Italian girl of 14 married with parental consent to a man who deserted her almost immediately. The child married a second man later while still legally bound to the first one, doing this, apparently, out of sheer ignorance.

No. 388. A social worker in a southwestern state reports the marriage of a girl of 15 with parental consent. The girl has obtained a divorce on the ground of infidelity.

No. 395. An attorney general in a southern state reports the marriage with parental consent of a child of 13 to a man of 36. The child's age was misrepresented and the pair never lived together. An annulment had been applied for.

As already suggested in another connection, the very early marriages that prove to be a success are less likely to come to our attention than are those that fail. This is as true of the marriages in which parental consent is granted as of those in which it is withheld. We have always to remind ourselves of the multitudes of fathers and mothers who are not only taking their parental responsibilities seriously but who are seeking guidance and help in the various crises with which they find themselves un-

able to cope single-handed. Legal and administrative safeguards against child neglect do not affect a majority of parents and children save as such neglect and exploitation in even a minority of cases concern every citizen; but from our field interviews and other inquiries we are led to believe that in no part of the United States are instances of parental carelessness, similar to those given here, an unheard of thing.

III. THE PRESENT SITUATION

On the other hand, many children and young people of parental consent age are marrying without consent. We have verified 297 individual instances, occurring in 38 different states, of age falsification in marriage license offices due to this lack, and our examination of license office records has furnished us further evidence. The increase in youthful marriages at the age of 18 which is shown in Table 5, for example, is partly actual and partly only apparent. In 45 marriage license offices situated in states requiring parental consent for the marriage of girls under 18, we were able to examine a sufficient number of licenses to justify comparison of the number issued to girls

recorded as 17, 18, and 19 years of age. It will be seen that a considerable number of licenses were issued to girls of 17. A much larger number were granted to girls recorded as 18, which might reasonably be expected. But in 28 of the 45 offices fewer licenses were recorded for girls of 19 than for girls of 18. The table arranges these offices according to the ratios of the number of 18-year-old girls to the number of 19-year-old girls.

On their face the figures in this table might suggest that girls of 18 are, relatively to those of 17 and 19, more numerous in the cities and towns at the head of this list than in those at the bottom, but what they suggest to us is something quite different. It is true that the one or two hundred consecutive records of issuance examined in each place do not supply a conclusive basis for comparison, and that it is also necessary to make due allowance for the larger number of girls who would wish to marry at 18 rather than at 17. But why should there be more than three times as many girls marrying at 18 as at 19 in some places, why should there be more than twice as many in some others, while in yet others the ratio is reversed? Thus, in Schoharie, New

TABLE 5.—MARRIAGE LICENSES ISSUED TO GIRLS RECORDED AS 17, 18, AND 19 YEARS OF AGE IN 45 LICENSE OFFICES

Marriage license office	License records examined	Girls of 17	Girls of 18	Girls of 19	Ratio of 18-year girls to 19-year girls
Schoharie, N. Y.	100	4	15	4	3.8
Albany, N. Y.	100	1	7	2	3.5
Monroe, Mich.	200	4	53	16	3.3
San Rafael, Cal.	200	1	32	12	2.7
St. Joseph, Mich.	100	1	17	7	2.4
Hugo, Okla.	200	2	54	23	2.3
Jeffersonville, Ind.	100	2	25	12	2.1
Altus, Okla.	274	13	71	35	2.0
Camden, N. J.	100	4	12	6	2.0
Ithaca, N. Y.	100	0	12	6	2.0
Mason, Mich.	100	7	18	9	2.0
Tulsa, Okla.	100	4	22	11	2.0
Vancouver, Wash.	100	3	13	7	1.9
Birmingham, Ala.[a]	100	2	16	9	1.8
Clayton, Mo.	100	1	17	10	1.7
Evergreen, Ala.[a]	100	4	25	15	1.7
Fort Payne, Ala.	200	16	52	31	1.7
Rock Island, Ill.	205	17	29	17	1.7
Los Angeles, Cal.	100	2	8	5	1.6
San Diego, Cal.	100	0	11	7	1.6
Crown Point, Ind.	108	2	17	11	1.5
Milwaukee, Wis.	100	5	12	8	1.5
Murphysboro, Ill.	100	7	19	13	1.5
Sacramento, Cal.	100	5	9	6	1.5
Vincennes, Ind.	100	10	18	12	1.5
Rochester, N. Y.	200	3	14	10	1.4
Davenport, Ia.	200	11	20	16	1.3
Duluth, Minn.	280	3	33	27	1.2
Chicago, Ill.	500	6	43	43	1.0
Waukegan, Ill.	100	0	12	12	1.0
Enid, Okla.	98	3	13	15	.9
New Bedford, Mass.	1,195	36	81	94	.9

[a] Only the licenses issued to white persons are included for this office.

TABLE 5.—(*Continued*)

Marriage license office	License records examined	Girls of 17	Girls of 18	Girls of 19	Ratio of 18-year girls to 19-year girls
Oklahoma City, Okla.	200	5	25	28	.9
Rhinelander, Wis.	116	7	16	18	.9
San Francisco, Cal.	200	4	12	14	.9
Montgomery, Ala.[a]	100	3	11	14	.8
Oshkosh, Wis.	300	2	17	21	.8
Santa Ana, Cal.	100	2	13	16	.8
Superior, Wis.	273	9	21	25	.8
Peoria, Ill.	200	5	20	28	.7
Wichita Falls, Tex.	87	6	8	11	.7
Baraboo, Wis.	100	3	8	15	.5
Boston, Mass.	500	7	20	45	.4
Belleville, Ill.	200	5	7	29	.2
New York, N. Y.	200	1	3	17	.2

[a] Only the licenses issued to white persons are included for this office.

York, which stands first on the list, nearly four times as many girls of 18 as of 19 received licenses, while in New York City the situation is the other way round. It should also be noted that, out of the total of 45 places, there were nine that could be described as marriage market towns, and seven of these are in the upper half of the list, while four are among the first 10. All of this, taken in connection with the many individual cases of age falsification known to us, suggests the probability that, instead of recording actual ages, the table indi-

cates roughly the extent to which girls below 18 have, in the absence of parental consent, falsified their ages, have claimed to be 18 and thus been able to obtain marriage licenses.

In few matters relating to marriage is lack of supervision more apparent than in the varying interpretations given to those clauses in the laws which require parental consent. Frequently these clauses are vague, and our field visits sometimes brought to light wholly different practices in the different offices of one state. Only three states—Illinois, New York, and Rhode Island—specify that parents must appear before the license issuer, and exceptions are made in New York State if parents are nonresidents of the state. Most states require the filing of written consent by parents either in all cases or else in lieu of their appearance, and about half of the states that have adopted this procedure specify that the signature must be verified in some way.

In states allowing verbal consent, the possibility exists that consent by telephone may be accepted. As a matter of fact, parental consent is so accepted in some offices. The inadequacy of telephone communication needs no illustration here. Occasionally a better means

of communication has been used; telegraphic dispatches have been sent by the issuer to parents at a distance and have been answered through the same medium.

Evidence is at hand of several cases in which girls of 14 and 15 have forged the signature of father or mother to letters consenting to their marriage. There are also a large number of cases in which persons appeared before the license issuer and, misrepresenting themselves to be the parents of candidates, had their evidence accepted. Apparently, some form of identification by responsible witnesses is necessary to protect the real parents from this form of fraud. When parental consent has to be given in writing—a provision which must be allowed in those cases, at least, in which the parents are at a distance—it is important that the signatures should be properly attested by a notary.

The present parental consent situation, even within the restricted boundaries in which consent still applies, is far from satisfactory. Upon that phase of it which involves parental forgiveness we have not dwelt. Often described in newspapers and not unknown to anyone is the hasty marriage in which the boy,

or more often the girl, is a minor and of parental consent age, but in which the parents have their first intimation in a telegraphic message or a letter that the marriage has been consummated. Parental forgiveness follows almost perforce. Father and mother find themselves making the best of what is often a bad bargain.[1] The state's share in these imbroglios, even if set right later by the annulment proceedings to be described presently, is adjusted very clumsily. For every genuine interest involved—for that of father, of mother, of child, and of the state, as represented by the license issuer—there is a far better and simpler way to safeguard these interests than that of annulment; namely, to require in each license issuing office satisfactory proof of age. With slight change if any in present laws, such proof can be required. The method of procuring it is described in the next chapter, Proof of Age.

[1] The same predicament was described long ago, though in different terms. In the Memoirs of an American Lady, by Anne MacVicar Grant, first published in 1808, we are told that in the Albany of 1770, "If the temper of the youth was rash and impetuous, and his fair one gentle and complying, they frequently formed a rash and precipitate union without consulting their relations, when perhaps the elder of the two was not above seventeen. This was very quietly borne by the parties aggrieved. The relations of both parties met, and with great calmness consulted on what was to be done."

IV. PROPOSED SUBSTITUTES FOR PARENTAL CONSENT

An examination of existing marriage laws and of the discretionary interpretations that have been made of them reveals a definite tendency to give judicial officers as well as parents the power of consent or of review in certain specified circumstances and for specified ages. Already in New Hampshire court consent is necessary in addition to parental consent for the marriage of girls under 18 years of age; in five states the age for which court consent must be obtained is under 16;[1] and in two other states consent of a court is necessary under the age of 15.[2] In several of these states such consent is required also if the male candidate is under 18, and in New Hampshire if he is under 20. This control by the state supplementary to that of the parent is in keeping with control which the state exercises with regard to the property of minors. The rights of the parent, as the child's legal guardian, are subject to careful limitation. The parent or guardian cannot sell or lease the child's real estate except upon an order from the court,

[1] Arizona, Kansas, Massachusetts, Michigan, and Ohio.

[2] Missouri and Oklahoma.

which scrutinizes with care every proposal presented to it so that the minor may have fair treatment.

In two states, California and New York, court control has been established over the marriage of children of juvenile court age without specific law, and the child whose marriage the juvenile court wishes to prevent is made a ward of that court subject to its orders. Two instances of this sort involving two girls of 13 in California were both reported in San Diego. In New York State similar control was initiated in 1911 in Monroe County, of which Rochester is the county seat, by the county court which has had jurisdiction in children's cases since 1910. This power has now been extended to county courts throughout the state, except where the leading city of a county has a juvenile court. In Monroe County the fact that parents are willing to consent to the marriage of a girl under 16 years of age is regarded as evidence of improper guardianship. If the court hears of an intended marriage at such an age through a school teacher or from any other source, the girl is taken under the care of the court through a petition alleging improper guardianship. When girls

are thus held, parents sometimes make vigorous efforts to have them released on bail, hoping to arrange their marriage before the petition is heard. As this would defeat the purpose of the procedure, bail is never accepted.

The fact that this exercise of the power of review can be effective was testified to by social workers in Rochester not connected with the court. One of these in a private society reported two instances in which the society had prevented or postponed the marriage of girls under 16 by notifying the license issuer. According to another social worker only one marriage of a girl known to be under 16 had been permitted by the court of Monroe County in the preceding ten years.

The supremacy of the authority of the court over that of the parents when a child is a ward of the court was apparently sustained by the attorney general of New York State in a Rochester case. A girl of 15 under the care of the court escaped from a home in which she had been placed. With her mother's consent she obtained a license and was married in a city outside the jurisdiction of the court whose ward she was. As shown in citing the case earlier (No. 20 on page 96), she was arrested and

committed to an industrial school. The school authorities hesitated to admit her at first because she was married, but full presentation of the facts by the court and consultation with the attorney general induced them to accept her.

In connection with marriages below the marriageable age the Ohio law expressly authorizes the substitution of court consent for parental consent. It also provides that, in case of pregnancy, the juvenile court "with the consent of one or both of the wards *or* with the consent of the parent or guardian" may authorize the issuance of the license when either one or both of the contracting parties to the marriage are under the specified ages—18 for males and 16 for females. For this purpose the candidates are made wards of the court. If a judge, on the authority of the word "or" in the section quoted, authorizes such a marriage, the license official can issue the license without parental consent.

Some thoughtful students of social welfare are inclined to question the wisdom in the long run of making a court the referee in all questions arising between parents and children. Much of the training of judicial officers and

many of the rules of court procedure have little relation to the human problems involved. Whether, in the future, a court and court procedure will be found to be the final solution, or whether some public department of child welfare will prove to be a better adviser, it is too early in this experimental stage to predict. But it may be suggested that the department of government which develops the most helpful advisory service for parents and is most successful in aiding them to prevent the dislocations described in this chapter will also be the one best fitted to deal with difficulties between parents and their minor children whenever, in connection with a proposed marriage, these become acute.

V. MARRIAGE ANNULMENT

A disqualification that exists at the time a marriage takes place is the only possible ground for its annulment. Annulments, therefore, are a better index than are divorces of the extent to which the laws regulating marriage fail to function. The disqualifications existing at marriage that are recognized as ground for annulment are "mental or physical incapacity, fraud, force, or error, non-age, consanguinity or

affinity, a former spouse living, or other fundamental impediment to the union."[1] Non-age—failure to have achieved the legal age for marriage—is the only one that can be considered here.

One of the most serious aspects of successful age falsification followed by license issuance is that, through annulment proceedings later on, a system of trial marriage is made possible which ends in a cheap form of divorce. Except in states where the marriageable age is fixed at the low minimum of 12, 13, or 14, this possibility not infrequently becomes an actuality. The state prohibits by law marriage below specified ages, but once the marriage has taken place and has also been consummated, the law in practically all of our states declares the marriage valid. That a marriage can be both illegal and valid is one of those knotty questions to which there are two sides. The only point to emphasize here is that, though the marriage is valid until annulled, it is voidable, or can be annulled, by a court of law. The possibility is thus created of a person's

[1] Schouler, James: Marriage, Divorce, Separation, and Domestic Relations, Vol. II, p. 1413. Albany, Matthew Bender and Company, 1921.

contracting, if young enough, a valid marriage which may be set aside at pleasure. In almost all the states, if it can be proved that the child concerned was below the specified minimum age at marriage, the court has no discretion. Annulment must be granted. This fact alone would make satisfactory proof of age at the time of marriage one of the most important administrative reforms connected with marriage, though there are many other reasons besides for urging it. Such trial marriages are taking place today in considerable numbers in certain states. The situation is saved from becoming worse than it is throughout the country by the fact that the minimum marriageable age for girls in most states is so low—in 23 states either 14 or lower. Few girls wish to marry or are forced into marriage below the age of 14, and few, therefore, are in a position to terminate their marriages by making a claim of non-age.

On the other hand, a relatively large number of girls who are above the minimum age for marriage are having their trial marriages annulled every year in the inferior courts on the ground that parental consent was lacking, though they were still of an age requiring

parental consent when married. In the supreme or appellate courts, however, we have found after diligent search only two decisions which sustain an annulment on these grounds; and there are many decisions in which the annulment has been refused. Nevertheless, the lower courts continue to grant annulments in increasing numbers for lack of parental consent. They do this probably for the simple reason that no one has been sufficiently interested to challenge them.

CHAPTER V

PROOF OF AGE

THOSE of us who were living in states where there used to be great demand for the wage labor of children were impressed with the fact that it was easy enough to raise the legal age at which they could be gainfully employed provided always that the new measures establishing a higher minimum age were without any administrative safeguards. So long as affidavits of parents, for example, were the only evidence required, the statutory minimum for the issuance of working papers might be 13, 14, or 16 years, but the ages at which many children were entering industry continued to be 10, 11, and 12. Opponents of child labor reform were shrewd enough to see that the requirement of documentary evidence from impartial sources, such as birth and baptismal records, was the effective and consequently, from their point of view, the dangerous part of a child labor law.

A situation parallel to this one comes to light through our field investigations of the

relation of the state to marriage. We have presented only a tithe of the evidence that we have gathered, but what we have given, when passed in quick review, shows that the practice of child marriage is still little under control. We have estimated that more than two-thirds of a million people are living in the United States today whose lives have been fundamentally influenced by the fact that they have been one of the two principals in such a marriage. Out of 240 child marriages studied, we have just seen that licenses were known to have been issued with parental consent in nearly half of the marriages and that, in 30 of the number thus approved, the children were so young that they were below the age at which marriage with parental consent was legal. We have seen further that in 79 of the 240 marriages the children involved were able, by means of false affidavits, to get their licenses without parental consent. Not only the minors under 16 but those over that age who are still within the parental consent ages have little difficulty, in fact, in obtaining marriage licenses by the simple process of signing affidavits at the license office declaring that they are seven, six, five or only one year

older than they really are. It may be questioned whether many of the children and young people who swear falsely to these documents have any conception of the nature of an oath. In some states having a statutory minimum of 16 years, marriages under that age seem to be as frequent as they are in others that have a minimum age of only 12—the laws are different but, through the acceptance of false affidavits in the former group of states, what actually happens is much the same in both groups. And finally, because the foregoing things are true, the courts are appealed to, and annulment proceedings are being instituted in many more cases than would be necessary if better evidence were demanded in marriage license offices.

In the light of public administrative experience which has extended over twenty years and more in some departments of government that find a proof of age requirement necessary, what steps could be taken by issuers of marriage licenses, without causing long delay or working undue hardship to anyone, to remedy the foregoing evils? Before attempting to answer this question by an examination of the methods developed success-

fully in other administrative fields it will be necessary to review briefly the usual procedures and the best proof of age practices that we have found in the license offices visited:

I. KINDS OF PROOF NOW REQUIRED

From license issuers themselves have come conflicting opinions as to the extent of the falsification against which precautionary measures are necessary. We find that those issuers who have proved to be least familiar in other particulars with what is happening in their own offices are the officials who are surest that cases of falsification are rare. One license issuer assured us that, so far as he was aware, not a single candidate had sworn falsely regarding his or her age. On the other hand, we have a large number of statements of which these few are good examples:

From two California issuers: "Probably not a day passes that there is not a case of age falsification." "We have much trouble because of age falsification."

From four Illinois issuers: "If my office is the first one approached [by applicants for licenses] I probably get the truth, since young people frankly give me ages below those required by law. In one case the man was about 22 and the young woman looked the same age,

but he said that she was 17. When told that her father would have to give his consent, both left the office. The next day I read in a newspaper that they had obtained a license in a neighboring city."

"Age falsification gives us a great deal of trouble. People joke and laugh about falsifying in making the application."

"I think possibly hundreds of candidates marry under age."

"We issue licenses from two different offices in this county. Candidates refused at one office on account of age apply at the other. They get several years older during the journey of a few miles to the second office, so now each office telephones to the other one as soon as an applicant for a license is refused."

The practice of notifying offices in adjoining towns or counties whenever an application has been refused for cause is one that we found in several of the more carefully administered license bureaus.

Information gained through interviews with 68 license issuers in 25 states during which their procedure in matters relating to evidence of age was covered may be summarized as follows:

In 57 of the 68 offices no proof is required. Dependence is placed instead upon the affidavits of the young people who apply or upon

those of their witnesses, supplemented in certain instances by the affidavits of parents. Disinterested evidence, preferably of a documentary kind, is never sought in these offices. Representative statements from this group are the following:

No attempt is made to prove age in any way. The oath of the applicant is accepted.

The oath of applicants is always taken in the matter of age. They are never asked to bring any proof.

We never require proof of age other than the oath of candidates. We let the responsibility rest with them. Sometimes a candidate not prepared to furnish parental consent has his prospective bride wait outside the office and states that he is over 21 and that she is 19. As she must be 21 in our state [to be married without parental consent] he is told that the license cannot be issued. Soon he returns and explains that she is really 21, but that she gave a false age at first because she did not wish her real age to be known. In that case we require both candidates to swear to the revised age and issue the license.

In five of the 68 license offices, however, other evidence than an affidavit of the candidate or the parent is required, though it is required only occasionally. When parents have notified one of these offices beforehand

of the probable application of a child and have asked that no license be issued, the child candidate, if born in the city, is sent upon application to the registry of births for a certificate, and is thus "given an opportunity to withdraw without committing perjury." Another issuer in this group says that although it is "equivalent to an open insult" to question anyone's word under oath, in doubtful cases if the applicants were born in the township, search is made in town records.

In three of the 68 offices proof better than the affidavits of candidates is sought not only occasionally but whenever the suspicions of the issuer are aroused and, in three others, evidence additional to affidavits is required for all candidates below specified ages. Several of the large cities, such as Chicago and Boston, have developed a regular routine procedure for all who claim to be of certain ages. Thus, for girls claiming to be either 18 or 19, the Boston license issuer requires a certified transcript of birth certificate, baptismal certificate, or of some substitute document which is satisfactory to him. While our field representative was in his office, a young man, who had applied five days before for a license to

marry a girl of 18, was refused the license at the expiration of the required interval because he had failed to bring the certified transcript of her birth certificate which he had been told to bring.

North Carolina's marriage law provides that if a license issuer knowingly or without "reasonable inquiry" issues a license without parental consent for a candidate whose age makes such consent necessary, he shall forfeit $200, payable to the parent of the boy or girl involved. The law is an old one, but recently it has been given unusual explicitness by a series of supreme court decisions. In all of these the parents have been sustained, the Supreme Court of the state establishing a high standard in its interpretation of the "reasonable inquiry" imposed upon license issuers in this matter of age. It was expressly denied by the court that the requiring of affidavits from prospective brides and bridegrooms, or from persons who professed to know them, was sufficient. In one North Carolina case the court held that the license issuer was under obligation to use as much caution as the cashier of a bank would use when asked to cash a stranger's check. The license issuers

of the state feel that the law, when thus interpreted, inflicts a hardship upon them. During 1921 their newly formed state association had a bill introduced in the state legislature which eliminated the "reasonable inquiry" provision and specified instead that license issuers should satisfy themselves regarding the ages of candidates by requiring them to file affidavits on this point. The bill was defeated.

Affidavits of parents are not conclusive proof of age, as we have seen; but when license issuers accept the evidence of other relatives—brothers, cousins, and so on—or of friends, they go even farther astray. Some of the North Carolina issuers got into trouble through accepting evidence of this sort.

Another source of confusion is the non-appearance of the bride at the license office. In the 25 states included in this part of our inquiry, there was great diversity of practice at this point. In certain offices in 10 of these states (seven had no specific statutory provision allowing license issuance under such conditions) we found that neither candidate had to appear before the license issuer. Offices in six of the states required only one candidate to appear at the license office. In 10 other

states, though the appearance of both candidates was not required by law, we found 17 offices in which it was required in practice. Finally, in all but one of the offices visited in five states we found that both by law and by habitual or usual office procedure the two candidates were required to appear. To anyone familiar with license offices in which this rule is followed it seems strange, after observing the ease with which the requirement is met, that more states have not adopted it.

One of the most careful license issuers interviewed gives the following instance of a case in which he was deceived because, contrary to his usual practice, he had not required the presence of both candidates. A man known by him to bear an excellent reputation applied for a license, giving the age of the young woman he was about to marry as 23. In that state parental consent is required up to the age of 21. The license was issued, and only a few days later the issuer learned to his chagrin that the bride was not quite 16.

In certain Illinois and Massachusetts offices, though in these states the appearance of both candidates is not compulsory, the plan has been adopted of requiring the appearance in

person at the license office of the prospective bride as well as the bridegroom whenever her age is given either below or only a year or two above the upper limit named by law for parental consent. While, as just shown, this method alone does not do away with age falsification, it is a step in the right direction.

Some license issuers have elaborate plans for discovering falsification by demanding dates in rapid succession, or by comparing dates of birth with ages given, but one issuer reports that in several instances magazines bought on the train by out-of-town candidates and left behind in his office had shown calculations made in pencil on the cover in order that the owners might be ready to evade discovery through just such a system of cross-questioning. On the other hand, neither hesitation nor blundering under this sort of heckling is any sure indication of untruthfulness. There are better ways of discovering the truth.

It is evident from this short review of the proof of age practices found in our field visits that a number of issuers are honestly striving to get down to a basis of fact and improve the type of evidence accepted, while others are still satisfied with any routine procedure which

"lets them out," as they are in the habit of phrasing it. Almost universally, however, the affidavit of a parent is still regarded as the best possible proof, though some issuers are willing to go so far as to cast doubt upon the evidence of parents who are not American born. In one case, where our field investigator had found by the birth records that a girl to whom a marriage license had been issued was less than 16, the issuer and his deputy agreed, when questioned, that "she did not look 16." "But," added the official, "her mother swore to it, and what else was there to do?"

II. KINDS OF PROOF AVAILABLE

The "what else" has been worked out very carefully by a number of our states in connection with another public function; namely, with that of issuing working papers to children who have met certain educational and age requirements and are entitled to enter industry.

This is not the only gateway, however, at which satisfactory proof of age has become a necessary precaution. About 122,000 searches of birth records are made annually at the New York City Bureau of Vital Statistics.

These records are consulted for a variety of reasons. Automatically now the age of every child is "cleared" through this Bureau upon its admission to school, and the date of birth, if there is a record, is reported to the school authorities and becomes a part of the child's school record. To obtain a passport from the government enabling one to travel abroad with the necessary proof of citizenship, one's birth certificate or an attested transcript of it must be produced if available. For certain positions in the civil service (federal and local) that have an upper or lower age limit it is necessary to provide proof of age before taking the required examinations. Chauffeurs cannot get a license without producing similar evidence, nor can mothers receive allowances from the Child Welfare Board until they have given proof that their children are of the ages stated. Voters whose right to vote is challenged on the score of youth sometimes have to get documentary evidence from this Bureau. Army and navy recruits often apply there when required to prove that they are old enough to enlist. Parents, on the other hand, seek the registry of births to prove that their boys, who have already en-

listed, are below the required age. Many public utility companies and commercial houses are in the habit of requiring birth records in selecting new employes.

This does not exhaust the list, but, next to the school entrance requirement, the largest single demand for attested transcripts of birth records comes from parents or from their children at the time the latter leave school and are about to enter industry. As far back as 1903 the New York legislature passed a law requiring parents who desire to put their children to work to file documentary proof of age when applying for employment certificates. The new legislation provided for alternative kinds of documentary evidence—for birth records, baptismal certificates, or other religious records. The experience of New York State in the administration of the early and amended forms of its child labor law is especially valuable, because many of the children applying for working papers in the City of New York are foreign and were born in places far distant. If the proof of age provisions of the child labor law can be well administered there, they can be well administered anywhere.

The amended law now provides that there

shall be three types of evidence: The first or primary type consists of (1) an attested transcript of the birth certificate, (2) a duly certified transcript of a record of baptism, or (3) a passport, showing the date of birth of the child. If none of these documents can be produced, the employment certifying officer must satisfy himself that they are not obtainable; in which case, if the child appear to the officer to be of the required age, other specified but secondary forms of documentary evidence may be accepted. Only as a last resort is physical examination substituted for documentary proof. Two physicians must be designated by the board of health to examine the child separately and certify that he or she is of the required age. Birth certificates issued for employment certificate purposes are procurable without fee.

How have these requirements worked in practice? Jeanie V. Minor, of the New York Child Labor Committee, who has worked out with the public authorities the various types of evidence available and has had more to do than any other one person with shaping present proof of age requirements in this particular field, has supplied us with the following analysis of the types of proof accepted in New

York City in 1923 for 1,000 consecutively issued employment certificates. Primary evidence of age (birth certificate, baptismal certificate, or passport) was produced in 87 per cent of the thousand. The birth certificate was the form of evidence proffered most often —in 49 per cent of these cases. The remaining 13 per cent, for which secondary evidence had to be substituted, included foreign school records, hospital records, court records, immigration records, vaccination certificates, citizenship papers, and school census age certificates.

Miss Minor lists 16 forms of secondary documentary evidence of age. In the proved absence of primary evidence, she regards these as of value in the following order:

1. Immigration records
2. Naturalization papers
3. Insurance policies
4. Adoption papers
5. Records of social welfare agencies dealing with families and children
6. Census age records—federal
7. Census age records—local
8. Certificates of circumcision
9. Bible records
10. Confirmation certificates
11. Sunday school records
12. Court records
13. Commitment records to institutions for children
14. Hospital and clinic records
15. Records of settlement clubs and classes
16. Vaccination certificates

Not to lean too heavily upon the experience of New York City, where there is good enforcement, we have sought data covering the same period, as to the ease with which under-age children can obtain working papers and as to the proportions in which the different types of required evidence are proffered, in 10 large cities—one other city in New York State and the leading cities of seven other states. In Washington, D. C., the situation was unsatisfactory. Many children were reported to be working, and in 43 per cent of the applications for working papers no evidence of age was produced. In the absence of such evidence the parent's sworn statement was accepted. In Baltimore, Philadelphia, Pittsburgh, Rochester (New York), Boston, Indianapolis, Cleveland, Columbus (Ohio), and Chicago, social workers reported, in the winter of 1923, that in rare instances employers took a chance and gave work to children under age, but that, in these cities, it was practically impossible for under-age children to get working papers. The evidence demanded in all these places was substantially the same as that required by the New York law, but the type of evidence most often proffered varied from city to city.

In Rochester (where records of two months only were examined) 50 per cent of the total of documents accepted were baptismal certificates, while only 2.3 per cent were passports. In Pittsburgh, 50 per cent of the total were birth certificates and 42 per cent baptismal certificates, while school records supplied the remaining 8 per cent.[1] In Indianapolis birth certificates constituted 67 per cent of the total, with insurance papers and school records 18 and 12 per cent respectively, but the insurance records, to be accepted as evidence, had to be not less than four years old. In Cleveland, birth certificates were 70 per cent of the total, and in only one-tenth of one per cent of the applications was there failure to supply some sort of documentary evidence. Boston reported physical examinations made of all children applying, but satisfactory documentary evidence was lacking in so few cases that officials very seldom had to consult the medical examiners for evidence of age. Philadelphia estimated that only 2.5 per cent of its appli-

[1] School records to be received as evidence should be those of the first school attended and should give the age at time of school entrance.

cants were unable to provide satisfactory evidence.

The procurability of evidence would seem to be established for these particular cities. Good administration in Wisconsin makes an even better showing, and that state-wide.[1] It must not be inferred, however, that there is perfect law enforcement in the child labor field or that all parts of the country have risen to the standard here indicated for our large cities. After many years of experimentation, state by state, child labor reformers are now seeking an amendment to the federal Constitution which will enable them to consolidate their gains. Unlike the marriage law reformers, who hardly have made a beginning in working out standards, they have at least three decades of practical experience behind them, and will be prepared to incorporate its results into any federal legislation following upon the adoption of an amendment. This experience points the way; it suggests the importance of working out each step, in the earlier stages of a program of reform, locality by locality. Not so

[1] Taylor Frye, in charge of the industrial permit system for all children under 17 in the state of Wisconsin, reports that, for the year 1922, 89 per cent of all permits issued were granted on the evidence of either birth or baptismal certificates.

many years ago factory inspectors, mine inspectors, and employers were convinced that the affidavits of parents were the only available form of evidence of age, and child labor reformers had one of their hardest battles with state legislatures at this very point. The practical and detailed way in which every part of their program has been developed is going to make it easier to win the campaign against child marriage.

Not only are standards of child employment advancing; school standards are improving also, and the more closely evidence of age for marriage is related to our school systems the better. As schools come to adopt the policy already described of verifying the age of pupils at the time of their first school entrance, an excellent type of evidence for marriage license issuance can be provided by requiring candidates below 21 to present a document to the issuer which exempts them from further school attendance. As educational standards continue to be advanced and children are thus induced to remain in school longer, the minimum marriageable age should be advanced to agree with the age at which school attendance is no longer compulsory. Eventually school

evidence on the subject of age, based as it should be upon primary documentary proofs, may become trustworthy enough to supersede entirely the types of evidence that have been enumerated in this chapter. These, however, would still be essential for candidates whose school records were in other countries.

Adoption of the procedures here described would act as a check upon those parents who are willing to marry off their boys and girls while they are still children. But the important fact to consider is that such proof of age requirements would serve as the greatest possible protection to all other parents. They never know now when some designing person or some impulse of the moment may spirit away the immature girl or boy from the home and make the child the victim of an administrative system which is without proper safeguards.

CHAPTER VI

NEXT STEPS

WHILE we are in no sense opposed to those early marriages which are contracted after or, in some cases, before majority, and would welcome a movement to do away with many of the obstacles to such marriages, more especially among professional people, the time has now arrived to ask those of our readers who have followed our argument thus far whether we have indeed succeeded in making out a case against child marriage. If any are unable to accept all of our conclusions, perhaps they will at least accept our statement of facts and will build upon it. For further building is absolutely necessary. It is true that we have tried to indicate the legal and administrative changes which should make child marriages almost impossible. To suggest them, however, is not to achieve them. Many more people must become interested if the reforms here suggested are to win their way. There should be further discussion, there should be further study, and above all,

there should be concerted action. Such action as regards marriage will be more fruitful than as regards divorce, and every step taken and secured for marriage reform will tend to reduce the number of divorces.

Following upon the present analysis, then, what next steps that would promote the abolition of child marriage are immediately possible?

First, discussion. Associations of parents can become familiar with the known facts; so can the various women's organizations interested in better public administration; so can the organizations of men and women who are shaping school policies. Educational associations might well devote more attention than they have yet done to the relation of school attendance, school releases, and school records of age to under-age marriage. Ministerial associations and the policy-shaping bodies of large religious denominations have a responsibility here which we believe they will accept with readiness, and in accepting will strengthen their own programs. Teachers in theological seminaries might bring this discussion into their classrooms and thresh it out there. Social

workers, with whom the inquiry originated, should give it more intensive consideration in their state conferences and their national conference. They might invite interested ministers and license officials to join them, perhaps, in a frank canvassing of the difficulties involved.

Second, study. Parallel with these discussions, and aided by them, more intensive study should go forward. The present attempt is only a beginning. There will be needed a larger body of social facts bearing upon youthful marriage, and these should be gathered locality by locality. It is not sufficient to tell the citizens of Oregon what is happening in Alabama or the East. What they need are records of conditions in their own state. To assure their intelligent and active interest, moreover, social facts must be both accurate and up to date.

A study of the marriage records of a given license office, for example, in order to discover the actual child marriage situation, should embrace, for a given period of time, not only the recorded licenses that have been granted to children under 16, but should be extended to

youthful marriages in the locality up to and including brides whose ages are recorded as 20 years, for there is always a chance of age falsification. A further reason for including all licenses issued to candidates below their majority is the fact that parental consent and the evidence of such consent which is now required should be covered by the study. What exceptions are made that permit marriage under age? If pregnancy is one of these, what proof of pregnancy is required? What proof of age is demanded? What proof of residence? What proof of the fact of divorce? In what proportion of cases are the affidavits of candidates, of their parents, and of witnesses the only evidence demanded and produced? All of these matters should be covered in studying a local situation.

On the biological side also there is need of more intensive study. Every little while someone comes forward with a tale of a girl who married at 14 or 15 and became the mother of 10 children, one of whom is now a leading politician. Such instances of physical and social competency are interesting, but usually the tale leaves many pertinent facts unrevealed. What we are eager to have authentic

data about is whether the girls of 15 or less who are married today are as likely to survive in good health as are those who married later and whether their progeny are as likely to be physically well endowed and to survive. The evidence we have that can be regarded as scientific all points one way; namely, against such very early marriages. With ample aid from the scientific laboratories of the country, the various associations of stock breeders have now at hand important data which enable them to give specific warnings and instructions to owners of horses, cows, and other live stock. Surely the subject of the physical well-being of human beings is more important. We confess that the human organism is more complex and that many more factors enter in, but, biologically speaking, there is nothing impossible about this suggested subject of inquiry and it is one full of significance for human welfare.

Some of the social causes of child marriage have been briefly enumerated in these pages—inadequate home protection, unhappy home conditions, exploitation and fraud, the attempt to escape from compulsory school attendance or from state control, and, last but

not least, economic and occupational conditions.[1] But here again only a beginning has been made. There is need of intensive case study, revealing further social causes as well as the social results of child marriage upon the individual, the offspring, the family life. Once their attention has been centered upon the subject, agencies engaged in social case work can begin to make these observations and to record them with care. At present, their data bearing upon youthful marriages are too fragmentary to be serviceable.

Third and finally, concerted action. It is not necessary to delay action until the results of these suggested inquiries are all at hand. There are things upon which the evidence that we now have as a foundation for our next steps is conclusive enough for all practical purposes. To state these things categorically without attempting to review in detail data already presented, we would suggest the following lines of endeavor to be undertaken without further delay:

1. *Know the work of your license issuer.* With few exceptions, these officials are inclined to welcome greater

[1] See pages 65 to 68.

public interest in the details of their task. If everyone opposed to child marriage would display an interest in what the issuers are doing, difficulties with which they are now contending single-handed would be brought to light, and they would be encouraged, moreover, to substitute for merely routine procedures a measure of that discretion and due diligence which the laws of many states now empower them to exercise.

2. *Destroy the fee system.* In so far as the system of fees in lieu of salaries to license issuers survives, it interferes with the disinterested character of their service, and should be reformed out of existence by much the same detailed attack that was necessary in the case of sheriff's fees.

3. *Strengthen the proofs of age.* An examination of your state marriage law and its comparison with the possibilities of proving age described in the preceding chapter should indicate what proofs of age could now be required by administrators in the exercise of due diligence without waiting for new legislation.

4. *Substitute better evidence for affidavits.* Or at least require evidence additional to the affidavit not only in the matter of the age of minors but in all other important qualifications of candidates, such as parental consent, legal residence, and divorce when divorce is alleged. No other form of evidence is quite so unsatisfactory in these connections as is the affidavit.

5. *Require both candidates to apply.* To require both candidates to appear in person before the license issuer would save many court actions later. In states in

which the marriage law is silent on the subject of who shall apply for the license and how, some license issuers have seen the advantage of requiring the personal appearance of both candidates and have made it a part of their regular administrative procedure.

6. *Note that a reasonable minimum age should be an enforceable minimum.* A majority of the foregoing suggestions are administrative, for most reforms in the marriage field must be so. It may be necessary, however, to effect a change of law in some of the states before there can be much improvement in child marriage standards. The slow educational process by which the law is changed will help to make changes effective. Thus, a reasonable and enforceable minimum age of 16 for girls and 18 for boys may require in a few states two or three steps taken at intervals in changing the law instead of just one change. In any case, minimum ages for license issuance should be specified in the marriage law of each state. At present they are definitely stipulated in the laws of only a small minority of the states.

7. *Co-ordinate the different laws of your state in which a minimum age is indicated.* The minimum marriageable age should not be lower than the minimum working age, and the compulsory school attendance age should be co-ordinated with both these others. No law, moreover, should allow a marriage license to be issued to a candidate so young that he or she can at once claim, by the provisions of a second law, the annulment of the marriage for non-age. Certain state laws now clash at one or more of these various points.

8. *Procure, in states that are without it, a law requiring advance notice of intention.* Next to a minimum age law, the most important single legislative reform in connection with child marriage is the advance notice of intention to marry given to the license issuer some days (usually five) before the license can be issued. Such a law is now in operation, with certain exceptions allowed for, in eight states. It is a protection to children and to their parents.

9. *Put the marriage market town out of business.* Is there a notorious Gretna Green in your state where out-of-town marriages are railroaded through either at the license office, the celebrant's office, or both? If so, what legislative or other action would make its present operations unprofitable?

10. *Discourage hasty marriages across the state border.* Is there a marriage market town or Gretna Green in a state adjoining your own—near the state border, perhaps? If so, what concerted action could be taken by people in the two states to abolish or at least reduce this traffic?

It is evident from the foregoing that the next steps in any effective campaign for child marriage reform are, in our estimation, those that must be taken state by state. We hold no brief for or against the general extension of federal power, but our studies have led us to the conclusion that, at the present time, federal regulation of marriage would leave the

practical working out of the situation where we now find it, and we find it in a state of chaos. In this as in so many other needed social reforms, it would seem that no single stage of development and advance can be omitted with safety. It is true that laws about marriage have been passed from time to time, but heretofore interest in their detailed administration has been of the slightest. Let us begin now and build solidly from the ground up for the welfare of children such as those whose misfortunes are here described. And there can be no better starting point than the local marriage license office in which, in the past, too many of these young people have received the authority of the state to do themselves a tragic mischief.

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